

COUNCIL MEETING

AUGUST 8, 2012

The Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair at the Council Chambers, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, on Wednesday, August 8, 2012 at 9:08 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Dickie Chang
Honorable KipuKai Kualī'i
Honorable Nadine K. Nakamura
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro

APPROVAL OF AGENDA.

Mr. Rapozo moved for approval of the agenda as circulated, seconded by Mr. Kualī'i, and unanimously carried.

MINUTES of the following meetings of the Council:

Special Council Meeting of April 4, 2012
Council Meeting of April 25, 2012
Special Council Meeting of May 16, 2012
Council Meeting of July 11, 2012
Public Hearing of July 11, 2012 re: Bill No. 2438
Special Council Meeting July 18, 2012

Mr. Rapozo moved to approve the Minutes as circulated, seconded by Mr. Chang, and unanimously carried.

Chair Furfaro: I would like to go into the Consent Calendar and I have a few housekeeping announcements that I would like to make on the consent calendar and the rest of the agenda before I do so. I want to first make note that pursuant to Section 28.05 of the Kaua'i Charter, the Cost Control Commission as you know has submitted to us, via the Mayor, recommendations that are required to be on our agenda with thirty (30) days of receipt of the recommendation. In today's agenda for consideration since they were both submitted as two (2) separate items, one Bill you will see on the agenda from the Cost Control Commission is dealing with their recommendation on dishonored checks. The second Bill that came over accordingly from the Cost Control Commission deals with a Bill related to Property Taxes and the Minimum Tax. The County Council is certainly allowed to charge on a minimum tax but the specific tax Bill needed additional work and this specific Bill will then will be reviewed by the County Attorney's Office and subsequently will come up in the near future in Mr. Bynum's Committee, that is item one (1). I believe the staff is keeping you posted on that transmittal, Mr. Bynum? Okay.

The other item I want to you to know is there are two (2) new grants on the agenda for today and those grants which are the P.O.H.A.K.U. Program for Keiki as well as the OPA requirement of approval from Council. Those two (2) grants will be moved to a Special Meeting next week Wednesday at 8:30 and will not be heard

today. The VOCA grant as we have had interpretations from the County Attorney, Finance and Procurement, the VOCA funds of two hundred, three thousand, one, zero, nine are recurring items, such has been preapproved according to the Procurement Office and the County Attorneys, that will be heard today and I did receive a recusal letter from Mr. Kualii.

Mr. Kualii: Mr. Chair, I did have a question about the consent calendar item before you get to that. If there was an item on the consent calendar item that I wanted to make a comment about, do I need to make a request that it be removed from the consent calendar item?

Chair Furfaro: Yes.

Mr. Kualii: I would like to request housekeeping the removal of C 2012-229, I would still support receiving it as the communication but I just wanted to make a couple of quick comments, that would be my request.

Chair Furfaro: I will recognize you at that time. Another housekeeping notice for everyone to be aware that we had begun and there is a structure outline that may require some Q&A for the Wailua Golf Course, their draft of their five (5) year strategic plan. I wanted to make sure that we made the announcement that the queries will be made with the Parks Department and the regular membership of the Wailua Golf Course. Now, we will go to the consent calendar but before we do, Councilmember Kualii, may I give you the floor so you could identify your item.

Mr. Kualii moved to remove C 2012-229 from the Consent Calendar, seconded by Mr. Rapozo.

Mr. Kualii: I wanted to make a couple of statements regarding the report.

Chair Furfaro: Would you want that time now?

Mr. Kualii: Is this the appropriate time?

Chair Furfaro: Yes, because we are removing it from the consent calendar.

Mr. Kualii: I just wanted to say that this is the quarterly report of the equipment purchases and that in the budget process I proposed, and we passed several provisos, two (2) of them having to do with these reports. There is a report for equipment furniture and vehicles but I am requesting a more detailed, specific report on vehicles and heavy equipment. I did talk to staff and I am setting up a meeting to get some insight on this particular report but it will come up again in the future because the reports hopefully will change just a little bit. It just primarily has to do with the vehicle leases and also the unexpended funds at the year's end and what amounts are being encumbered and what have you.

The motion to remove C 2012-229 from the Consent Calendar was then put, and unanimously carried.

Chair Furfaro: We will now go to the Consent Calendar and I will ask the public if there is anyone that wants to speak on the remaining items of the

Consent Calendar, recognizing that this opportunity is provided to you so that you can speak now and go on with your day. You will be given three (3) minutes and there will be no questions or required responses from the Council. This is your opportunity to pose your commentary. Is there anyone in the audience that has anything in the Consent Calendar that you would like to speak on for three (3) minutes?

There being no objections, the rules were suspended.

DAVID R. HAMMOND: I am a hundred percent stockholder of Integrity Alarm Surveillance and Access. I would ask the courtesy of the Chair if I might have a couple extra minutes but I am addressing the issue related to the alarms that have come up. My attitude towards the alarm situation is, as a provider and someone who is experienced in the field is, I do respect the use of emergency services and I do get angry when they are unnecessarily used. There are a number of ways to reduce the problems that take place. There will be false alarms, there will always be false alarms, you cannot completely eliminate that but there is a way to reduce it. I have a number of thoughts on that and I have discussed with Mel a little bit about the idea of having an application, keeping a minimal fee of twenty-five dollars, having couple false alarms with no charge, and then say it goes from there to fifty and from there to a hundred and then double after that. At that point in time people ought to have their act together.

You need to know a little history of why this is happening. I have dealt with this problem for quite some time and one of the things that I do when I set somebody up with monitoring is number one, I try to create a buffer zone. I put at least three (3) to four (4) contacts on the list so the instructions to the monitoring company is that they have to call the entire list before they contact emergency services. I have had situations, problems with one of the largest providers in the State and on this island, where what they are doing... for instance cleans at 'Anini and they had the Fire Department out there three (3) times within two (2) weeks, and of course I was getting angry when I heard about that. I was thinking this is ridiculous, they should be contacting the property management company, this was during the middle of the day and they should be on a list. If you have an application, I believe on the application it should require the names of at least three (3) contacts so that they have to be contacted first before law enforcement is being contacted.

Another thing that is happening is you have these companies coming in and saying we will give you a discount if you sign a five year monitoring agreement. What they are doing is putting in bulk rate equipment, they are not putting in the same kind of quality equipment that I would be putting in. I am charging more from the start, so the customers need to be paying for somebody that is willing to come out there and fix this. There are several things I want to point out here, number one (1) is, we need to, I think, outlaw long term monitoring agreements in this County. Basically, in my opinion it is a scam because quality speaks for itself. My agreements, if you want to quit tomorrow, you can quit, you do not have to be frustrated. I had where people use this other company and got locked in and then after a while they are frustrated and I am like, "I am sorry, I cannot help you because you are locked in to a five year monitoring agreement and there is nothing I can do to take over and help with the system." I think that another thing that would help to eliminate these types of problems is also that there is an online listing of violations. This would show the customer and it would show the local company that is being involved, because it is a part of your reputation. I do not want my company to be known as one that has false alarms and so if any of these companies

are being slack, if their names are starting to show up, well then of course that is going to kick their tail in and they have to get their act together and start dealing with the situation.

As far as the application goes, I think that they need to be able to list that they got a few contacts on there. They need to be able to list who the party is that is going to service the system and some other information related to that. I think you have to recognize that we have had a lot of issues with break-ins going around this island and we do not want to just like... we need alarm systems but there has to be a balance there. We have to respect the use of the law enforcement, at the same time we have to realize that alarm systems are necessary, and there needs to be some sort of a balance and we need to keep the people that are involved in doing the work responsible to what they are doing.

The meeting was called back to order, and proceeded as follows:

Chair Furfaro: Thank you very much and there will be no questions from the Councilmembers, there will be questions when the Bill comes up and the possibility of the introducer of the Bill asking for a deferral and/or sending it back to Committee. Thank you for your testimony at this point. Is there anyone else that would like to take their time now to speak? Let us go to our receipt of the Consent Calendar.

CONSENT CALENDAR:

C 2012-228 Communication (07/25/2012) from the Mayor, transmitting for Council consideration, the Cost Control Commission's recommendation to increase the Service Charge assessed for Dishonored Checks, Section 28.05 of the Kaua'i County Charter: Mr. Kualii moved to receive C 2012-228 for the record, seconded by Mr. Chang, and unanimously carried.

C 2012-330 Communication (08/02/2012) from Councilmember Kualii, transmitting for Council consideration a Resolution relating to smoke-free county parks and calling for a State ban on underage smoking and smoking at all public beaches: Mr. Kualii moved to receive C 2012-330 for the record, seconded by Mr. Chang, and unanimously carried.

COMMUNICATIONS:

C 2012-229 Communication (04/11/2012) from the Director of Budget and Purchasing, transmitting for Council information, FY 11/12 4th Quarter Statement of Equipment Purchases, pursuant to Section 18 of the Operating Budget Ordinance No. B-2011-732: Mr. Kualii moved to receive C 2012-229 for the record, seconded by Mr. Bynum, and unanimously carried.

C 2012-331 Communication (07/17/2012) from the Director of Personnel Services, requesting Council approval to dispose of Application Record (paper applications, drivers license and transcripts) January 1, 2007 - present, pursuant to Section 46-43, Hawai'i Revised Statutes and Resolution No. 49-86 (1986) as amended, for the following reasons:

1. Kept for over two (2) years and original verified to be on file with NEOGOV (Recruitment Computerized System).
2. Originals scanned and attached, stored electronically.

Mr. Kualii moved to approve C 2012-331, seconded by Mr. Chang, and unanimously carried.

C 2012-332 Communication (07/19/2012) from the Housing Director, requesting Council approval to decline the County's option to repurchase Unit No. 36, Villas at Puali, located at 1963 Hokunui Place, Līhu'e, Hawai'i, 96766, and to grant the owner a waiver of the buyback and allow the market sale of the unit for a period of one-year: Mr. Chang moved to approve C 2012-332, seconded by Ms. Yukimura, and unanimously carried.

C 2012-333 Communication (07/19/2012) from the Housing Director, requesting Council approval to decline the County's option to repurchase Unit No. 81, Villas at Puali, located at 1936 Hokulei Place, Līhu'e, Hawai'i, 96766, and to grant the owner a waiver of the buyback and allow the market sale of the unit for a period of one-year: Mr. Chang moved to approve C 2012-333, seconded by Ms. Yukimura, and unanimously carried.

C 2012-334 Communication (07/19/2012) from the Executive on Transportation, requesting Council approval to apply for, receive, indemnify and expend a Federal Transit Administration (FTA) Section 5311 and 5311(b)(2) Rural Transit Assistance Program (RTAP) grant for operational, administrative and training expenses for the County Transportation Agency in the amounts of \$595,843.00 and \$10,925.00 respectively: Mr. Kualī'i moved to approve C 2012-334, seconded by Ms. Yukimura

Ms. Yukimura: These Federal moneys for our bus system are key operational moneys that allow our bus system to continue, so we are very grateful to the Federal Government and to our Transportation Agency that apply for these moneys.

The motion to approve was then put, and unanimously carried.

Chair Furfaro: On the next item, I want you to know that I have just received an email from the First Deputy Prosecuting Attorney indicating that they have no one able to come to the Council this morning for the VOCA agenda item. As they have an important cold case that they are working on and they have a series of multiple meetings with KPD regarding some recent traffic incidents and they are sensitive matters. Therefore, I am going to ask to defer this item.

C 2012-335 Communication (07/20/2012) from the Prosecuting Attorney, requesting Council approval to apply, receive and expend Kaua'i VOCA Expansion Program federal funds in the amount of \$203,109.00, and approval to indemnify the State of Hawai'i, Department of the Attorney General, for salaries, fringe, and operational expenses for the Office of the Prosecuting Attorney Victim/Witness Program for the term commencing August 1, 2012.

Mr. Bynum moved to defer C 2012-335, seconded by Mr. Chang.

Chair Furfaro: Any discussion for anybody in the audience? Seeing none. Councilmember Rapozo.

Mr. Rapozo: There is no discussion after the deferral, I would have asked for the courtesy to have some discussion.

Ms. Yukimura: Point of order.

Chair Furfaro: I apologize for moving towards that deferral and I thank you very much for honoring our current rules. On that, we will have no discussion on the deferral.

Mr. Kualii: Just a procedural question – I would have recused myself if there was discussion but I can stay here and not vote on this deferral?

Chair Furfaro: I think you should step out for a moment before I call for a vote and so noted that I do have from Councilmember Kualii who has employment relationships with the YWCA who has submitted a recusal letter on this item.

The motion to defer C 2012-335 was then put, and carried by a 5:1:1 vote (*Mr. Rapozo voting no and Mr. Kualii recused*).

C 2012-336 Communication (07/20/2012) from the Prosecuting Attorney, requesting Council approval to apply, receive and expend State of Hawai'i, Office of Youth Services funds for the Keiki P.O.H.A.K.U. Diversion Program in the amount of \$35,000.00, and approval to indemnify the State of Hawai'i, Office of Youth Services for the term commencing August 15, 2012: Mr. Rapozo moved to approve C 2012-336, seconded by Ms. Yukimura.

Chair Furfaro: Excuse me.

Ms. Yukimura moved to defer C 2012-336, seconded by Mr. Bynum.

Mr. Chang: It is a motion to defer.

Mr. Rapozo: Well some did and some did not. I have the right to make a motion as I see fit. Did you guys discuss this before the meeting?

Chair Furfaro: No, we did not, Mr. Rapozo, and somebody made a motion who is following it and I am not going to accept the second on the deferral. Members, do you have comments? If not, I am scheduling this for Special Council Meeting next Wednesday at 8:30. No discussion. Is there a second on the deferral?

Mr. Rapozo: No, there was a second on the motion to approve.

Ms. Yukimura moved to defer C 2012-336 to a Special Council Meeting scheduled for August 15, 2012 at 8:30 a.m., seconded by Mr. Chang, and unanimously carried.

C 2012-337 Communication (07/25/2012) from the Prosecuting Attorney, requesting Council approval to apply, receive and expend State of Hawai'i funds in the amount of \$70,290.00 for the Victim Witness Program, which will be utilized to fund a temporary Victim Witness Counselor I position (\$43,296.00), temporary set of Professional Equipment (\$5,260.00), Fringe Benefits (\$16,364.00), Operational Supplies (\$5,000.00) and Travel Expenses (\$1,000) Fiscal Year 2013 to fulfill important aspects of the Justice Reinvestment Initiative.

Chair Furfaro: This is another item that I am looking for a deferral to our Special Council Meeting on Wednesday of next week for 8:30.

Mr. Bynum moved to defer C 2012-337 to a Special Council Meeting scheduled for August 15, 2012 at 8:30 a.m., seconded by Mr. Bynum, and unanimously carried.

Chair Furfaro: Excuse me, before we go any further. I would like for Jade...

There being no objections the rules were suspended.

Ms. Yukimura: Chair, on this vote, could we also have the "no" votes?

Chair Furfaro: Yes.

Ms. Yukimura: You did not call for it.

Chair Furfaro: We will do it, let me get the motion cleaned up first.

JADE FOUNTAIN-TANIGAWA, Deputy County Clerk: Council Chair, on C 2012-336 and C 2012-337, was that a motion to defer to the Special Council Meeting next week at 8:30?

Chair Furfaro: Yes, that was the motion.

Ms. Fountain-Tanigawa: For both?

Chair Furfaro: Yes.

Ms. Yukimura: That was the motion for me on C 2012-336.

Chair Furfaro: And that is the same motion as I stated on C 2012-337. So if we are clear, both of these items are going to a Special Meeting on August 15 at 8:30 in the morning.

Ms. Fountain-Tanigawa: And C 2012-335, the VOCA moneys, is that also...

Chair Furfaro: That was deferred until that Special Council Meeting, yes.

Ms. Fountain-Tanigawa: Thank you.

The meeting was called back to order, and proceeded as follows:

Chair Furfaro: Is the motion clear now. Now, I want to ask again, Vice Chair Yukimura had asked to get clarification on the "no" votes for C 2012-336 and C 2012-337. I really thank you for your guidance but I have it clear on my mind, I want to call for the "no" votes on C 2012-336. Were there any "no" votes on C 2012-336? Okay, now may I ask on C 2012-337, were there any "no" votes to be recorded?

Ms. Yukimura: Thank you.

CLAIMS:

C 2012-338 Communication (06/04/2012) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Greg Vajda, for damage to his personal property, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Kualii moved to refer C 2012-338 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Mr. Chang, and unanimously carried.

C 2012-339 Communication (06/04/2012) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by James Dizol, for damage to his vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Kualii moved to refer C 2012-339 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Mr. Chang, and unanimously carried.

C 2012-340 Communication (06/04/2012) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Tiana Aguiar, for damage to her personal property, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Kualii moved to refer C 2012-340 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Mr. Chang, and unanimously carried.

LEGAL DOCUMENT:

C 2012-341 Communication (08/02/2012) from the Environmental Services Management Engineer, Public Works, Solid Waste Division, requesting Council approval of the right-of-entry agreement and indemnification of Kekaha Agriculture Association as follows:

- Right-of-Entry Agreement (Kekaha Certified Redemption Center).

Mr. Chang moved to approve C 2012-341, seconded by Ms. Yukimura.

Chair Furfaro: Mr. Clerk, is this the same item we previously made a motion for in 2009 as far as the easement?

There being no objections, the rules were suspended.

Mr. Watanabe: Yes.

Chair Furfaro: It is the same?

Mr. Watanabe: Yes, it is a continuation.

Chair Furfaro: Anyone in the audience that wishes to speak on this item?

Mr. Rapozo: I do not know if this is time sensitive or not and I apologize for not having read this agreement identification but is it possible to have this referred to the Committee to get a briefing from Public Works?

Chair Furfaro: Let me just check, I do not think we have a problem. Is there any time sensitivity to this? The question has been posed from Mr. Rapozo on this document if there is any sense of urgency. I posed earlier that this right-of-agreement, entry agreement was the same extension from 2009.

Ms. Fountain-Tanigawa: You are correct. The original agreement was approved in 2009 and went through extensions and this is the same legal document.

Chair Furfaro: Mr. Rapozo, do you have any questions for Jade?

The meeting was called back to order, and proceeded as follows:

Mr. Rapozo: Not for Jade but I guess I was not here in 2009 so I am not familiar with what this is pertains to. I recently read about the redemption center, the HI-5 program; I do not know if this has anything to do with that. I understand that the HI-5 program has been cut for some questions on the fiscal components of that. I am not sure if this is again is involved and so if it is not time sensitive and I do not believe it is, I would just ask to be briefed by Public Works.

Chair Furfaro: I would like to suggest we do this... let us give a call to Public Works and ask them to be present at 11:45 and we will take it from there, Mr. Rapozo.

Mr. Rapozo: That is fine.

Chair Furfaro: Does that meet with your request?

Mr. Rapozo: That is fine.

Chair Furfaro: We will come back to this at 11:45. Mr. Clerk, please note as such.

There being no objections, C 2012-341 was moved to 11:45 a.m.

COMMITTEE REPORTS:

HOUSING / TRANSPORTATION / ENERGY CONSERVATION & EFFICIENCY COMMITTEE REPORT:

A report (No. CR-HTE 2012-10) submitted by the Housing / Transportation / Energy Conservation & Efficiency Committee, recommending that the following be received for the record:

“HTE 2012-11 Communication (05/23/2012) from Committee Chair Yukimura, requesting agenda time to discuss the Hawai‘i State Legislature’s approval of Senate Bill 3025, its effect on the Counties, and its implementation.”

Mr. Chang moved for approval of the report, seconded by Ms. Yukimura, and unanimously carried.

PUBLIC SAFETY & ENVIRONMENTAL SERVICES COMMITTEE REPORT:

A report (No. CR-PSE 2012-07) submitted by the Public Safety & Environmental Services Committee, recommending that the following be approved as amended on second and final reading:

“Bill No. 2435 - A BILL FOR AN ORDINANCE TO AMEND CHAPTER 22, KAUAI COUNTY CODE 1987, AS AMENDED, BY ESTABLISHING A NEW ARTICLE RELATING TO ALARM SYSTEMS.”

Mr. Kualii moved for approval of the report, seconded by Mr. Rapozo, and unanimously carried. (*See later for Bill No. 2435, Draft 1*)

**FINANCE / PARKS & RECREATION /
PUBLIC WORKS PROGRAMS COMMITTEE REPORT:**

A report (No. CR-FPP 2012-10) submitted by the Finance / Parks & Recreation / Public Works Programs Committee, recommending that the following be approved as amended on second and final reading:

“Bill No. 2437, Draft 1 - A BILL FOR AN ORDINANCE TO AMEND SECTION 19-1.3 AND SECTION 19-1.4 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PARKS AND RECREATION,”

Mr. Kualii moved for approval of the report, seconded by Mr. Chang, and unanimously carried (*See later for Bill No. 2437, Draft 2*)

COMMITTEE OF THE WHOLE:

A report (No. CR-COW 2012-17) submitted by the Committee of the Whole, recommending that the following be received for the record:

“COW 2012-06 Communication (07/19/2012) from the Council Chair and Councilmember Nakamura, requesting agenda time for Hawai'i Health Connector to provide a brief introduction and overview of “The Hawai'i Health Connector,” which was established pursuant to Act 205 (SLH 2011) in accordance with the Federal Affordable Care Act (ACA), and the services the organization provides as the “State-based” Exchange,”

Mr. Kualii moved for approval of the report, seconded by Mr. Chang, and unanimously carried.

There being no objections, the Council recessed at 9:40 a.m.

The Council reconvened at 10:06 a.m., and proceeded as follows:

Chair Furfaro: We are back from a twenty (20) minute recess and I have decided, because the Resolution and this ordinance, as well as the fire alarm piece, we seem to be working on an abundance of amendments, I would like to continue our meeting.

There being no objections, Proposed Draft Bill (No. 2443) was taken out of order.

BILLS FOR FIRST READING:

Proposed Draft Bill (No.2443) – A BILL FOR AN ORDINANCE AMENDING SECTION 6-5.1 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PAYMENT TO COUNTY BY CHECK OR NEGOTIABLE INSTRUMENT, SUBSEQUENTLY DISHONORED: Mr. Kualii moved for passage of Proposed Draft Bill No. 2443 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 5, 2012, and that it thereafter be

referred to the Finance / Parks & Recreation / Public Works Programs Committee, seconded by Mr. Chang.

Chair Furfaro: Is there anyone in the audience that wishes to speak on this proposed draft bill as it was submitted to us from the Cost Control Commission? No one in the audience. Members, is there any commentary from the members?

Ms. Nakamura: I wanted to thank the Cost Control Commission for bringing this to our attention and for doing some of the background research and laying some of the foundation so that we can look further into this matter.

Mr. Rapozo: I really appreciate the Cost Control Commission looking at ways to basically bring these fees up to speed; however, we must remember what the Cost Control Commission's function is by Charter. It is really to look at cost cutting measures. These things should be handled, in my opinion, by the Finance Department. To charge 7.50 for a bad check when the banks are charging twenty (20) that should have been changed a long time ago. I do not think that it is the role of the Cost Control Commission because the Charter is quite explicit in the role of the Cost Control and it is to analyze programs and services within the County and look at how we can cut cost without reducing the standards and reducing services. I appreciate the effort. I am just hoping that the Cost Control Commission will start looking at ways to actually cut costs here in the County.

Chair Furfaro: For Vice Chair Yukimura and yourself, Mr. Rapozo, if you recall back in 2006 I introduced an item that would replace their name as the Cost Control and Revenue Commission, because they looked at our property taxes which represents almost eighty-three percent of total income. My ordinance change lost, so your point is well taken by the Chair but we have what we have.

Ms. Nakamura: Thank you for the opportunity to speak again, Chair. I actually believe that that is something I would be interested in looking at again and reexamining. Having served on the Cost Control Commission, I think that a lot of what we have been seeing coming out of the entity has been along what Councilmember Rapozo brought up which is revenue enhancing recommendations, but the fact that they had the opportunity to really look at very specific issues and spend the time and energy around it and interview all the different County Agencies and to get that kind of detailed feedback is something that should be resurrected. I would be interested in supporting it.

Chair Furfaro: Well I am sure my piece is available from 2006, so if you want to revisit it, it is there. Any more commentary on this recommendation?

Mr. Bynum: Just procedurally when we receive things from the Planning Department, we get a staff report with all of their background, and for Cost Control, at least getting the minutes and a report of what their thought process that would help in our decision making.

Chair Furfaro: ...those are available and we will have them make copies as well. As I mentioned earlier, the second item on their suggestion to the Council will deal with the minimum tax and I will make sure that you folks have that narrative as we get an opinion from others, especially the County Attorney.

Ms. Yukimura: I want to just piggyback on Councilmember Rapozo's point that it is a job or duty of our Administration and the various Departments to keep the fees updated. I think we have gotten quite a bit of flack about the sharp increase in car registration fees and that is partly because we failed to make incremental and gradual increases and we left ten (10) years or so without raising the fees. It is hard on our people, our licensees when we do these major jumps. It is much easier for them when we do incremental increases that are aligned to the cost of processing and doing business. In deed the Water Department, until Ernie Lau and the Water Plan failed to raise the water fees sufficient to cover replacement and repair of the water system, so we are hurt in two (2) ways. One (1), we are hurt by getting sudden jumps and we are hurt by not having a well maintained system, so it really is a matter of good management that we keep fees updated especially as related to maintenance and preventive maintenance of our systems.

Chair Furfaro: Thank you again for revisiting that the licenses were key example when we went through them. We had a 1972 increase, we did not have the next one until 86, we did not have the next one until 98, we did not have the next one until 2012. The cost incurred during the year for operations drove some of that but it might be something we can put in our budget reviews to revisit fees as part of the budget and as we expand what we did this year, it might be a good time to revisit those. Any further dialog on this recommendation from the Cost Control Commission?

The motion for passage of Proposed Draft Bill No. 2443 was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chang, Kualii, Nakamura, Rapozo	TOTAL - 7,
	Yukimura, Furfaro	TOTAL - 0,
AGAINST PASSAGE:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

There being no objections, Bill No. 2435, Draft 1, was taken out of order.

BILLS FOR SECOND READING:

Bill No. 2435, Draft 1 - A BILL FOR AN ORDINANCE TO AMEND CHAPTER 22, KAUA'I COUNTY CODE 1987, AS AMENDED, BY ESTABLISHING A NEW ARTICLE RELATING TO ALARM SYSTEMS: Mr. Rapozo moved to approve Bill No. 2435, Draft 1, seconded by Mr. Chang.

Mr. Rapozo: After passing this out of the Committee, I had received a few calls from constituents regarding and inquiring the necessity to have such high fees for the new permit. I did research the other Counties and found that our proposed fees were quite high and it may even act as a deterrent for people on fixed income or for anyone to get burglar alarms. In reviewing the other Counties ordinances, I decided to propose an amendment and I am hoping we can do it today. I do have an amendment that is being circulated.

Mr. Rapozo moved to amend Bill No. 2435, Draft1, as shown in the Floor Amendment which is attached hereto as Attachment 1, seconded by Mr. Kualii.

Mr. Rapozo: The amendment would reduce the permit fee from a hundred and fifty dollars (\$150.00) to twenty-five dollars (\$25.00) for the initial. The renewal fee, the annual renewal fee would be reduced from fifty dollars (\$50.00) to ten dollars (\$10.00), and the operation of a non-registered alarm system would drop from two hundred fifty dollars (\$250.00) to a hundred dollars (\$100.00) which is what O'ahu does. That is pretty much the amendment that I am proposing. It will bring us in line with the O'ahu ordinance which seems to be working quite well and there has been some discussion as to the hundred fifty dollars (\$150.00) fee for the third false alarm and subsequent false alarms. I am open to discussion if in fact that is too high, should it be graduated or should it just remain at the one, fifty (150), so that is the proposed amendment.

Mr. Bynum: I was contemplating similar amendments, I had talked with a number of people and so this is proof that great minds sometimes think alike. I appreciate the effort. Part of my concern is and I am looking for it in here but I think we addressed this in the amendment that this goes into effect in six (6) months... I hope staff can confirm this... yes, it is. There are a lot of people and I have talked to some of them that have alarm systems now, they do not have problems with false alarms and we were going to impose a hundred fifty dollars (\$150.00) permitting fee and Mel's amendment changes that and I am in full support to a more nominal fee that is more appropriate. I am fine with the false alarm assessment being high because the Bill already allows two (2) false alarms at no charge... kind of like "get your alarm system working, we do not want to have police coming needlessly off of their patrols." I am in full support of this amendment and I appreciate it.

Ms. Yukimura: I received calls too and it is part of the process, I guess which is good and part of the benefit of having our meetings televised that people learn what is happening and call us to let us know how they might be impacted and to suggest alternatives. My question is – do we need a registration fee at all or could we just work with the ones that are false alarms?

Mr. Rapozo: The purpose of the registration is to provide the necessary information for the Police Department should no one be present at the residence if an alarm goes off. It is just a matter of keeping a record of the subscriber so in the event something is amiss and no one is at the residence, this would give the Police Department an opportunity to find somebody... that is the whole purpose of the registration. Basically, to keep record of all the locations and addresses and any other information that the Department could use when they dispatch the officer up to the scene. Mr. Hammond testified earlier today that he would recommend that the application include three (3) names and numbers of three (3) contact people. I would hope that the Police Department when they put together the application and I am sure they can follow the Honolulu one but they would touch basis with the experts in the field like Mr. Hammond and the other providers. What he said this morning was very helpful and informative that in fact we do have a lot of alarm companies out there that are selling systems on long term contracts that people cannot get out of. I know that because I get calls in my business requesting information on how they can get out of a contract and it is tough to get out of it and the monitoring systems, you can buy cheap alarm systems or you can get quality alarm systems which actually you can adjust the sensitivity of the alarms. I know we spoke about the rats and cats but you can adjust sensitivities in these alarm systems where those things will not trigger the alarm, they cost a little more but that is what I think Mr. Hammond was trying to get across. There are a lot of cheap systems out there that are standalones that will blow their horn when a cat passes whereby many of the newer technology today can

allow – the system will know if it is a human or insect based on the mass of the thing. I think his points were well taken. I think we do need a registration and the twenty-five dollars (\$25.00) I think is a very nominal cost, it is only for the first initial, after that it is ten dollars (\$10.00) a year and that will basically offset the cost to administer the program. But I am open to suggestion, JoAnn, if you feel it is too high.

Mr. Bynum: I think this brings it into a reasonable range and I support it. The other thing I just wanted to add is these folks... I am hoping the Police Department and that was the purpose of the six (6) month delay of implementation to do some PR to let people know about this. I have a little problem with I have this alarm, I had this for years, I had my first false one ever and you get hit with a fine because you never applied for a permit and you did not know you needed one. I do have some concerns about that but permitting it and getting a handle on where there are alarms, what types they are, I think will improve public safety for the owners and perhaps safety for the officers when they respond to have the data, so I think this is a worthy effort overall and this amendment improves it. It makes it reasonable overall.

Ms. Nakamura: I too received some feedback from the community and I think the amendments proposed by Councilmember Rapozo address the concerns that I received mainly because people, alarm users also pay a monthly maintenance fee as well. On top of the maintenance fee to have to pay additional fees at the level being... originally proposed was quite high. I think I would support these amendments.

Mr. Rapozo: I just wanted to add that there are only a few providers of monitor service on Kaua'i. I think the education component from KPD need to be targeted to the providers because they get a bill every month, their bill should include a little flyer that says "effective six (6) months from now, you will have to register your system." If I was the provider, I would even go as far as putting the application in the bill and I am hoping they would have that customer service mentality that they would do it and send it out right away because it is going to be in effect in six (6) months. I think it is a lot easier to educate the community with this bill because of that because there is only a handful, there is not that many. I believe the educational component will fall into place again if KPD works directly with the alarm companies. The other comment, I know these meetings are televised but the calls that I got, they read it in the paper. I want to give credit where credit is due and the Garden Island actually printed a story on this Bill and got them... at least they were informed and I am glad they did because if not, this Bill would have passed today with those high numbers so thanks to the Garden Island for printing a good story.

Ms. Yukimura: I have a question about the service charges and fees, when we say "operation of a non-registered alarm system" does that mean that when there is a false alarm, that is when we will first realize that there is a non-registered system?

Mr. Rapozo: Yes, what will happen, if let us say my alarm goes off, and again keep in mind the monitoring service as Mr. Hammond stated should have a list of people to call, if they have three (3) people and let us say they call me and I go make a check of the property and I find that it is false, it is not considered a false alarm. It only becomes a false alarm when they notify KPD.

Ms. Yukimura: Right.

Mr. Rapozo: If they do notify KPD, if they cannot get a hold of me and the number two or three then they call KPD, KPD arrives and finds out it is a non-registered system, they are going to get the hundred dollars (\$100.00) fee. Of course the first violation there is no penalty, there is no fine for the first false alarm, so they will only be charged a hundred dollars (\$100.00). That will be an incentive for them to register the alarm.

Ms. Yukimura: Thank you.

Chair Furfaro: Any further questions? Mr. Rapozo, I just want you if you can, regarding the registration fee and the annual fee, share with us again for the audience what changes were made.

Mr. Rapozo: The new permit fee and again this will take place six (6) months after the Mayor signs it, if he signs it. The new permit fee will be reduced from a hundred fifty dollars (\$150.00) to twenty-five dollars (\$25.00) and that is a one-time fee. The annual renewal fee will be reduced from fifty dollars (\$50.00) to ten dollars (\$10.00), and the false alarm fees will not change, it will remain at a hundred fifty dollars (\$150.00) from the third false alarm and subsequent false alarms, so the first two in a twelve month period is free or there is no fee, and an operation of a non-registered alarm system will be a hundred dollars (\$100.00) and that is reduced from two, fifty (250) and that is the only changes that this amendment does.

Chair Furfaro: And as you mentioned there seem to be more in line with the City and County of Honolulu?

Mr. Rapozo: Correct.

Chair Furfaro: Is there anyone in the audience that wishes to speak on this and the amendment?

There being no objections, the rules were suspended.

KEN TAYLOR: Chair, members of the Council, my name is Ken Taylor. I understand and appreciate what Mel is trying to do here, I am very concerned that these newer amounts, twenty-five dollars (\$25.00) and ten dollars (\$10.00) annual renewal fees, do not cover the cost of maintaining records and issuing permits. I think I would much rather see a new permit fee at a higher rate and no renewal fees until property changes hands. I think that makes more sense than to have something like a ten dollars (\$10.00) annual renewal fee that is costing I would imagine to issue a renewal fee and keep track of it, you are looking upwards of fifty dollars (\$50.00). I do not know who is going to keep all these records but I think with the new program like this it should cover its own cost and as I look at this, I just see that it is going to require moneys from the General Fund to administer or help administer the cost incurred. I would highly suggest that you look at permit fees being at a higher rate and no annual fees and then the renewal be done at the time of property changes hands and I think it would eliminate some of the paperwork and cost involved in administering the whole project.

Chair Furfaro: Any one else in the audience wishes to speak?

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to amend Bill No. 2435, Draft 1, was then put, and unanimously carried.

Chair Furfaro: Any discussion on the main motion?

Ms. Yukimura: If it is possible, I would like to ask for a deferral to the end of the agenda. I would actually like to make some phone calls and just test a couple of the fee issues.

Chair Furfaro: Okay, I just want to say if there are going to be many more amendments, I am going to send this back to Committee, I just want to say that. I was lenient on two (2) items regarding fees for this but shall we defer this to the end, we shall do so but if we are going to entertain more amendments, I am going to send it back to Committee.

There being no objections, Bill No. 2435, Draft 2 was deferred to the end of the agenda.

Chair Furfaro: We are still working on amendments for the other Resolution that was on the "smoking bill" so do we have other business in front of us? What time did we indicate that Engineering would come over?

There being no objections, the Council recessed at 10:32 a.m.

The Council reconvened at 10:51 a.m., and proceeded as follows:

RESOLUTIONS:

Resolution No. 2012-51, RESOLUTION RELATING TO SMOKE-FREE COUNTY PARKS AND REQUESTING STATE BAN ON UNDERAGE SMOKING AND SMOKING AT ALL PUBLIC BEACHES: Mr. Bynum moved to approve Resolution No. 2012-51, seconded by Mr. Kualii.

Ms. Yukimura moved to amend Resolution No. 2012-51 as circulated, seconded by Mr. Chang.

Ms. Yukimura: This would take out – delete from the Resolution the request from the Council that the State Legislature adopt a law to prohibit minors from smoking. The reason I am proposing this is because I think the whole attempt would be to hold... under the present law hold the sellers of tobacco products responsible for selling to underage children in an effort not to make or give young people a criminal record for smoking tobacco. I believe this is the orientation of those who are trying to reduce smoking and promote health in both children and adults. The effort and the target are people who are selling it rather than the children who are smoking. Actually Chair, I think there is some public testimony on this but I believe this is the issue that is before the Legislature already and the main thought is not to give a criminal record to minors. I hope I am stating that accurately.

Mr. Rapozo: First of all, underage smoking would be a violation, it would not be a criminal record, and it would just be a violation no different than a traffic ticket. The problem that we are seeing is not necessarily the child and that is what they are, children – the child buying the cigarettes – it is getting it from somewhere else. So the adult buys the cigarettes, that is perfectly fine, but they are

either taking it from the parent cartons at home or having... just like alcohol. I was very happy to see that, I would love to see our Legislature pass a law that would prohibit children under the age of eighteen from smoking or being in possession, I think that is something that should be done simply because they are minors. I am surprised to see this in here. I will not be supporting the amendment because I think that is a critical part to the campaign is to reduce the number of children – minors from smoking. I believe this would be in line with the alcohol law and it would up to the Legislature to decide it would be a misdemeanor or a violation. I look at it as a violation unlike the selling which is a criminal offense. I would like to see it stay in because I think that is a strong statement from this Council and I am hoping that the others will see the same. Thank you.

Mr. Chang: I would like to ask if we could get some clarification. What is the ramifications, is it a criminal law? Is it a minor offense? Can we have somebody to clarify?

Chair Furfaro: We can ask the County Attorney to be up.

There being no objections, the rules were suspended.

Mr. Chang: I just wanted to get the clarification, what would be the ramifications or what is the law with minor... I guess I say that because if it is a criminal record, I think we would all hate to have a young child make a mistake and that gets on he or she record as far as job opportunities and college. I do not want them to be scarred from it.

AMY ESAKI, First Deputy County Attorney: I have to apologize but I need time to research that issue. I did not realize that this would be a question today.

Chair Furfaro: Anymore questions for the County Attorney in the order of people that I identified?

Mr. Kualif'i: But Amy, you can answer that this is merely a request by this Council to the Legislature to consider prohibiting and it does not specify anything about what the penalty would be. It could easily be... and that would be the place to lobby one way or the other but this request is just saying it should be prohibited?

Ms. Esaki: Yes, this is a request to the State Legislature. It is up to the State Legislature to decide to put it in a form of a State statute.

Mr. Rapozo: Amy, is it not true that the juvenile record is not public? If a minor got cited for smoking a cigarette, that record would not follow him as far as a job application and so forth. If you do not know that, you can go research.

Ms. Esaki: I would prefer researching it.

Mr. Rapozo: Some juvenile records become available in certain circumstances but I believe in a job application scenario I believe the juvenile record is not open. It is a matter of whether it is a violation or criminal matter.

Ms. Esaki: Yes, so let me check into that.

Mr. Rapozo: Thank you.

Ms. Yukimura: Not a question for the Deputy County Attorney but if we could... after she is done, keep the rules suspended, I would like to have some input from the Anti-Tobacco Coalition.

Chair Furfaro: I am going to make it clear that the public will be able to testify on this. I want the public to make sure that I am going to give multiple opportunities but you need to be giving testimony on the item that is in front of us which is the amendment to the Resolution. The Resolution is on the floor and not the Bill. Anymore questions for Amy? Does anyone in the public that has gotten a copy of the amendment to the Resolution willing or wanting to speak?

VALERIE SAIKI: Valerie Saiki from the Coalition. I just have a quick question, so we are discussing the amendment or...

Chair Furfaro: We are only discussing the amendments at present time. Throughout the day when we speak on specific items, other Bills – each time you can come up and speak.

Ms. Saiki: Okay.

Chair Furfaro: Is there any comments now on this amendment?

Ms. Saiki: I just want to bring to the floor so that other Councilmembers are aware of Senate Bill 1168. That was a Bill that was proposed by Senator Wakai who proposed it this past Legislative Session on the Tobacco Possession Bill on Minors. That Bill died and the main concern was the way that the Legislation was worded, it was a criminal offense. That was a concern for jobs and college applications.

Chair Furfaro: Thank you for that information. Does anybody have a question on this amendment directed to the individual that is on the stand?

Ms. Yukimura: As a criminal offense I think we go back to Councilmember Rapozo's question and I want to know if you know whether the record is closed for juveniles.

Ms. Saiki: That I do not know but I know about the Bill that was in...

Ms. Yukimura: And the position of the Anti-Tobacco Coalition is that as a violation but not as a criminal offense, would that be okay or that is something that is also not desired in terms of effective policy and stopping children from using tobacco?

Ms. Saiki: The Coalition prefers that the Legislation stay with the vendors and retailers because it is keeping it out of the hands, it is the education that would prevent the youth from possession or using.

Ms. Yukimura: Like the alcohol compliance checks have shown that it is not that effective and I guess the question would be whether a law that makes possession a violation, possession by a minor a violation, whether that would be effective in reducing minor use of tobacco, and your coalition does not think that it would?

Ms. Saiki: It is not that we think it would or would not, we do not want the responsibility under the youth, but the vendors and the adults surrounding the youth, so education first and foremost when it comes to policy to not put that on the minor.

Ms. Yukimura: It would be different from how we treat alcohol?

Ms. Saiki: I can only speak on tobacco.

Chair Furfaro: Anymore questions for Val? If not, thank you very much. Is there anyone else that would like to testify on the floor amendment as circulated?

TESSIE KINNAMIN: In looking at this amendment, it is just relating to requesting a State ban on smoking at all public beaches. Underage smoking is bracketed, so is that taken out?

Ms. Yukimura: You are right that it is and in looking at it, it is not really the intention. We do want to ban underage smoking. It was just to not have underage smoking be a criminal offense. That was the intention here in deleting the phrase at the end. I thought that changing the title was a proper correlation but actually since you raised the question, I think we want to keep the issue of a ban on underage smoking, we just do not want to make it a criminal offense. I appreciate you bringing that up.

Ms. Kinnamin: It is still not clear.

Ms. Yukimura: Yes, I am going to either withdraw this amendment and change it or vote against it.

Chair Furfaro: For the purpose of this discussion, and this amendment came from Vice Chair Yukimura and I do not usually like to do this but are you... since it is your amendment, you are okay with un-bracketing "underage smoking and"? For the purpose of further discussion, anticipate that that is un-bracketed. Anyone else in the audience wishes to speak on this amendment before I call the meeting back to order?

There being no objections, the meeting was called back to order, and proceeded as follows:

Ms. Yukimura withdrew the motion to amend Resolution No. 2012-51, Mr. Chang withdrew his second.

Ms. Nakamura: The copy of the amendment that you are receiving removes the "BE IT FURTHER RESOLVED, that the Council requests that Hawai'i State Legislature to adopt a law prohibiting smoking at all public beaches." The reason why I am proposing to delete this specific section of the proposed Resolution is because of the fact that we as a County as of this moment prohibited smoking at our County beaches and it is a little, in my book... I think it is hypocritical of the County to be then asking the State to remove that privilege on the beaches when we have not made that commitment for our County and public parks. That is why I am proposing this amendment.

Ms. Nakamura moved to amend Resolution No. 2012-51, as shown in the Floor Amendment which is attached hereto as Attachment 2, seconded by Mr. Rapozo.

Chair Furfaro: Further dialog?

Mr. Rapozo: I am thankful that this was introduced. I was not aware that Nadine was going to introduce this but I had the exact same concerns. First of all, you heard my comments about the underage smoking, I believe that that is a vital part of this Resolution. I also agree that what we discussed when we are discussing the Bill as far as a Resolution, this covers pretty much a policy statement to the people that in fact this Council would appreciate or really want to see our parks be smoke free when there are patrons around. This covers a lot of what was discussed and I can definitely support this amendment simply because it does not put forth any bans especially and Nadine hit it right on the head when she said "how can we ask the State to move on a Statewide ban when this County has not moved on a Countywide ban." I will be supporting this amendment.

Mr. Bynum: I was trying to save these comments for when we were on the Resolution as a whole, but let us be really clear, this Resolution is coming into context and in the timing of us having another Bill on this. I think it is premature to discuss this Resolution at all until we make a determination on the Bill that is before us. Councilmember KipuKai said that he thought during the debate on the Bill that he thought a Resolution was a better way to go, so I am seeing this Resolution and the way it is worded as an alternative to a Bill that we have not decided yet. Whether I support this Resolution or not is depending on the outcome of that Bill and these amendments are dependent upon the outcome of that Bill. Let us talk clearly, this Resolution is coming in the context while we are having this debate about a Bill to prohibit smoking in County parks. I wish we would take up that Bill and then discuss this Resolution, so when this comes to the main motion, I would likely ask for a deferral or something to say, let us deal with this then let us deal with this.

Chair Furfaro: Let us deal with that right now, how many of you want to deal with the main... the ordinance first and I will go with a simple four (4) member majority or who wants to deal with the Resolution as we are progressing now?

The motion to continue in discussion for Resolution No. 2012-51 was then put, and carried by a 4:3 (Councilmembers Bynum, Nakamura and Yukimura voting no).

Ms. Yukimura: Call for a Division of the House.

Chair Furfaro: We will call a roll call and a Division of the House. How many will like to continue on working on the Resolution at this time, roll call please.

The motion to continue in discussion for Resolution No. 2012-51 was then put, and failed by the following vote:

FOR DISCUSSION: Kualii, Rapozo, Furfaro	TOTAL – 3,
AGAINST DISCUSSION: Bynum, Chang, Nakamura, Yukimura	TOTAL – 4,
EXCUSED & NOT VOTING: None	TOTAL – 0.

Chair Furfaro: We have a change in vote from the voice call. This item is tabled for now and let us read the main Resolution item. Members, please listen clearly to what we are voting on because that is very unusual for us to do a voice vote and then have a change as we pose the question.

Bill No. 2437, Draft 2 - A BILL FOR AN ORDINANCE TO AMEND SECTION 19-1.3 AND SECTION 19-1.4 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PARKS AND RECREATION: Mr. Bynum moved to approve Bill No. 2437, Draft 2 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Ms. Yukimura.

There being no objections, the rules were suspended.

REBECCA SMITH: I am giving testimony for somebody that had draft it and he was going to be here but could not make it. His name is Paul Ochoa and I will read his testimony.

Chair Furfaro: That decision to testify for someone else is based on the Council Chairman's approval, okay. Is it in written form?

Ms. Smith: Yes, it is.

Chair Furfaro: Please submit it and I will give you just three (3) minutes for that individual.

Ms. Smith: Aloha and thank you for the opportunity to speak on behalf of this bill. Paul Ochoa, thirty (30) year, resident of Kauai, Kalāheo – Wainiha, twenty (20) plus years Substance Abuse Services, every public and some private schools. Vice Chair of Tobacco Free Kauai.

I am really here to represent the underage population and our keiki and future, the ones without a voice. First, addiction, it is a health issue. It affects the brain and the ability to make good choices and decisions. For example, would a sane person take five to six breaks a day if they knew that it would jeopardize their job? Would a sane person give up cream for their coffee to smoke cigarette and who would beg for a cigarette or smoke someone else's cigarette butts because they are so addicted to nicotine? What parent would want to role model this for their child? Research has shown that anyone who has not stopped smoking after years of health information and prevention, if not underage, is either highly addicted or has mental health issues. Are you aware this addiction requires a residential "T" "X" which I am thinking "treatment program" for some people, just like alcohol and other drugs?

I heard someone testify it was about respect and I must say most addicts are not respectful, and as a parent, am I respecting my child if I am forcing them to breathe my secondhand smoke?

A nicotine addict coming here to fight this bill is like an alcoholic fighting to be allowed to drink and drive. A Councilmember said "a person should not be stopped from smoking in a park, if no one else was in the park." Should we allow a person to drink and drive if no one else is on the road? No, because the potential for that is very small and there can still be serious consequences. With nicotine, there is always the rubbish. In the past when I took my family to Lydgate Park, I would spend about half an hour picking up cigarette butts from around the picnic table. I

can only imagine what those new campgrounds will look like the day after two (2) smokers have been camping for two (2) days or the parking lot after a wedding in the main pavilion. Do we really want to pay County employees eight dollars to ten dollars an hour picking up cigarette butts?

Personally, I mow County land in front of my home because there is a crosswalk and I want the area nice for the kids. I pick up beer bottles and caps but mostly cigarette butts that are being thrown out the windows of cars. It is a lack of respect for our children and environment.

Lastly, I want to mention the unemployed and homeless population. Let me start off by saying I also work with the homeless population. Many of them live in our parks and on our beaches, not only leaving the butts utilizing the welfare system which affects medical cost.

I apologize if I have offended anyone, that was not my intention. My goal is to promote health for the future generations, and laws with education and role modeling have shown to be most effective. Again, this is a testimony from Paul Ochoa.

Chair Furfaro: You will not get extra time, you were able to read his testimony at the decision of the Chair. It is written and will be submitted but since it is his testimony, we do not expect you to answer questions posed on his testimony. You will be given time to testify on your own time when the appropriate time comes.

Ms. Saiki: The Coalition for Tobacco Free Kaua'i and the Tobacco Free Kaua'i do support this Bill as written.

Chair Furfaro: Questions for Valerie? No.

Ms. Smith: I just want you to support this Bill. Again, I am here for our youth, our families and their health. I do work with a lot of children that are like I stated before which are caught smoking and we do offer services. Our smoking rate is huge... we have dropped by huge numbers with our youth and with our adults. I know that when I go into public areas not having to smell the smoke, it is just so refreshing to live on this island. It is a disappointment going into the beaches and our parks and having to inhale secondhand smoke. That is my personal testimony because I think it is bad for our environment, our families and I hope you support the Bill.

Chair Furfaro: Anyone else wishing to speak?

TINA SAKAMOTO: I am not part of any Tobacco Coalition, I am a Kaua'i resident. If this Bill No. 2437 is to address the improvement and protection of the health and safety and general welfare of the people of Kaua'i, I do not think a forced behavior modification or a law is the most prudent way to address this policy. I think a Resolution would be the best policy making a statement because forced behavior modification really is a negative aspect of this Bill. I think you should provide the people of Kaua'i information, educate them and let them make the decision. That is their choice. If you are pursuing Legislation, then I think you should go to the manufacturers, go to the source, and demand a better product. Right now you are penalizing the end users – the people. I think you should go to the source and address it accordingly. Demand that the manufacturers who provide the alter tobacco products and the components, the production of it, have a

Legislative means to force that these products are better for the people if they decide to use them but do not penalize the people – educate them and let them make the decision. My recommendation is to kill this Bill and to go on with the Resolution.

Mr. Chang: Tina, thank you for being here. Did you have a chance to look at the Resolution?

Ms. Sakamoto: I was just handed the Resolution, so it does not give much time for review. I looked at the bracketed and highlighted areas.

Mr. Chang: But you have not had a chance to take a look at this?

Ms. Sakamoto: For the Resolution... the Resolution proposed by Nakamura, I do believe that it is a good Resolution. I am glad the smoking at public beaches was bracketed out and on the underage smoking, I think it is a good policy. Again, the concern is the record on a juvenile and once that is clarified I believe that this is a good Resolution.

Chair Furfaro: Anymore from the public that wish to testify?

Ms. Kinnamin: To keep things short, I totally agree with what the previous speaker said, Tina Sakamoto. I still oppose the Bill and the amendment put forth today.

Chair Furfaro: Anymore testimony before I call the Council meeting back to order?

Ms. Esaki: I think I have the answer to Councilmember Chang's question regarding juvenile records. Due to the State statute juvenile records are sealed except for unusual circumstances. I guess in this case it would be sealed.

Chair Furfaro: Thank you.

Mr. Chang: I am sorry but you faded out.

Ms. Esaki: It will be sealed except for unusual circumstances such as... and it is outlined in five, seventy-one dash eighty-four in the Hawai'i Revised Statutes.

Mr. Bynum: I am sorry, the record is sealed but if the juvenile subsequently becomes an adult and is charged with another crime then the probation reports include the juvenile record, correct?

Ms. Esaki: Again, in that circumstance, yes, it probably would.

Mr. Bynum: So they are sealed in terms of public but there is still a juvenile record that... and the fact that a juvenile had been adjudicated for crimes does play out... it goes with them into their adulthood at least in terms of the legal system, correct?

Ms. Esaki: That one, I would have to research further.

Mr. Bynum: Based on personal experience, I think I am correct about that. Again, I am not making an issue, I just wanted to make that comment that it is not public record but if you get charged as a crime as an adult, your juvenile record plays into the probation reports that help determine the sentencing and the outcome of your offense.

Chair Furfaro: Anyone else wanting to testify, please come up before I call the meeting back to order.

MARY PATMILLS: Aloha to all and to Ni‘ihau, I am wearing my Mānā today. I am speaking for myself and for many others today that I still oppose this Bill 2437 and any amendments that have been proposed. I would still like to see a Resolution.

Chair Furfaro: Anyone else?

There being no objections, the meeting was called back to order, and proceeded as follows:

Ms. Yukimura moved to amend Bill No. 2437, Draft 2, as shown in the Floor Amendment which is attached hereto as Attachment 3, seconded by Mr. Bynum.

Ms. Yukimura: These are only housekeeping measures – because we took out the prohibition against tobacco products, we are taking out the definition of tobacco products which I do not believe are mentioned in the Bill anymore. There were sections of the code that were inconsistent and the language proposed here is a way to make the bill language consistent with the other parts of the bill.

Chair Furfaro: Anymore dialog on this amendment. I am going to have a roll call vote by choice. It has been too confusing a couple times here.

The motion to amend Bill No. 2437, Draft 2 was then put, and carried by the following vote:

FOR AMENDMENT: Bynum, Kualii, Nakamura, Rapozo, Yukimura	
Furfaro	TOTAL – 6,
AGAINST AMENDMENT: Chang	TOTAL – 1,
EXCUSED & NOT VOTING: None	TOTAL – 0.

Chair Furfaro: Are there any further amendments before I open discussion for this? No further amendments. Now, we will start with discussion.

Mr. Bynum: I have been clear from the beginning that I support a prohibition of smoking in County parks. I supported the original bill which was real straight forward to me and it since has been amended. I supported the bill as amended because democracy is about compromise. I think the Tobacco Coalition has been very consistent at providing excellent testimony, I want to thank them but this bill came very close to passing and the Tobacco Coalition said we are really uncomfortable with these provisions but they have come up with something that they can support. I just wanted to say that... I said “a bill whose time has come.” I want to give a couple examples and I do want to read one (1) section of the Resolution which is “WHEREAS, the U.S. Surgeon General has stated that there is no safe level of exposure to secondhand smoke, whether indoors or outdoors, and

that children's exposure to secondhand smoke causes increased risk of sudden infant death syndrome, respiratory infections, middle ear disease, more severe asthmas, respiratory symptoms, and slowed lung growth." Now, this is the U.S. Surgeon General who is telling us that kids indoors or outdoors are impacted seriously by secondhand smoke. I want to put it into context of the story that I told and get a little more clearer. Lae Nani is a condominium near Papaloa in Wailua and in front of Lae Nani, as in many places, there is a hundred feet of public land, public beach. Lae Nani, like many resorts has already made this determination that smoking is a nuisance and an irritant to their guests and they do not allow smoking around their pool and their outdoor areas, but what they do is have two (2) designated smoking areas both of which are immediately adjacent or on public land. Our resorts have already gone there, New York City has already gone there and we understand that this is a problem but we are about... if we do not pass this law, allowing the situation to continue, where private property owners are saying to their guests, you cannot smoke here but go out there on the public beach and smoke, this comes close to home. I have a new grandson Clifton and my daughter... my kids grew up in Wailua House lots and that beach in front of Lae Nani has a kiddy - mini pond for kids and it has been a beach that my kids grew up on and they still go there. We had two (2) family gatherings there recently on the public property and my daughter went there with... first ever outing for baby Clifton, goes to Lae Nani and Lae Nani has put a smoking receptacle on the public beach and tells their guests to go out there and smoke. My daughter is there at her favorite beach with our new baby at his first outing, people repeatedly coming up and smoking within three (3) or four (4) feet. She kindly asked them "can you refrain from doing that" and they say "no, this is our designated smoking area." What is good enough for the guests to be free of smoke and secondhand smoke and health and then driving those people into our public beaches, I am really unhappy about that. I think we should pass this bill. It has been based on compromise. I applaud Councilmember Chang for introducing it and taking the heat in an Election year because this is not a winner in terms of politics; it is about doing the right thing for our kids, for our island and having the same set of standards in our public park that our resorts have moved to. I strongly encourage my colleagues to pass this bill.

Mr. Kualii: I think like Councilmember Bynum, I have been clear on my position on this from the very beginning and I think it is very important that government focuses on the health and public safety on our citizens but that we do not go so far as to legislate a morality and behavior modification - I think as one of our testifiers did say. To pass this bill would be a far overreach of our County getting into people's personal lives and regarding the personal choices that they make. Besides that the most important principle there, this bill is confusing, it's unenforceable, there is no scientific data that tells us how dangerous secondhand smoke is in the open air. A lot of things are dangerous but we are clear that the danger inside an enclosed area where the smoke is accumulating and not able to dissipate is clearly more dangerous in an open air. With distance and open air, it is not saying that it is safe but it is a lot less dangerous and to try to lump them together and use general statement by the U.S. Surgeon General to say that it is dangerous indoors and out, sure it is... it is dangerous in both instances but the difference I am sure is overwhelming if someone could actually show us the numbers. I do not know if either side has done it because it probably is so different and not an argument to be made. I just think democracy is a compromise; however, we have had no compromise here. The Tobacco Coalition has been unwilling to compromise and this is why this bill failed its original vote and went to deferral instead. A temporary designated area in an undersized, far away parking area is not a compromise to smokers. That is the majority trampling on the rights of the minority and utilizing the government to do that. I, as a government official,

cannot do that. As much as I care about public safety and health and about our children making right choices and choosing not to smoke and of course us having good public awareness and good education and modeling good behavior. All you adults who smoke should quit. You need to quit because by smoking you are modeling bad behavior, that is clear. For your own health, this to me is the reason why I put the Resolution forward is because from the very beginning, and I have been very clear, this has to be about public awareness, education, it has to be about the spirit of aloha and the common courtesy practices that are... the majority of our citizens overwhelmingly practice and that smokers and non-smoker alike. I think in principle, we are all trying to move in the right direction but to utilize the government to make a law that tramples the rights of a minority in the name of and in the fear of public safety, it is not the way to go and I just hope that we defeat this bill at this time and pass the Resolution and take that as a start and keep pushing the education because I think it is very important.

Ms. Yukimura: There has been education since my father was a young father. He got cigarettes in the army and then became addicted to them and then he had a young child and he saw an example of a lung that had been dissected of a smoker, he decided he had to quit. The smoking rate since that time did not go... my father quit but others did not. Education alone is not sufficient and it was only when we started to create smoke free areas that the percentage of smokers in our society started to go down. The evidence show that smoke free laws are the only effective way of eliminating secondhand smoke exposure which has been proven to be a public health hazard responsible for the deaths of at least fifty thousand non-smokers each year. We legislate behavior all the time when that behavior harms others. Look at drunk driving laws and smoke kills. If only the users or smokers were affected, we would have no right to regulate behavior, but in this case where it is affecting others especially young children, we need to regulate behavior. To create a smoke free park is part of an affirmation that health is important to us and to try to also have compassion and include and embrace smokers, my thought was we have a non-smoking... a smoking area in the parking lot and that is what we are doing here. We are going to have a trial period, we are going to see how it works and if there are problems with how it is working or if it is working well, we can guide our future public policy in that way. We have a chance to make a change and establish health here on our island.

Mr. Chang: As most of us remember, I actually helped put together a bill and we first started off at the beaches, unfortunately we could not dictate the beaches, it is under the jurisdiction of the State DLNR. From there we went into the parks and when we got the bill together, please keep in mind this conversation started a year ago, this started a long time ago. It got on the floor, maybe the timing was right or maybe it was bad, I do not know but since that we started off with the tobacco bill. We started off with my concerns with being chew, spit, whatever you want to call it – free for all in the parks. From the beginning I supported a total ban. That to me was the way to go, I went with the total ban. The ban would have been something enforceable, I believe, because it is cut and dry – yes or no. The Police Chief Perry came here and said the easiest thing to do and enforce would be a full ban. Now there has been a couple of things that has been brought up into my attention mainly by myself. Last week I sat here and listened to the Committee members chat, keeping it in mind that several weeks ago we did have what I felt would have been a five, two vote in favor of banning and only allowing an area in the parking space but the coalition wanted an all or nothing decision which I felt that when we had it, we had it. Listening to what everybody had to say last week, I did my due diligence based on what everybody had to say and their concerns. What I did was number one (1), I went from Black Pot Beach to

McArthur DelaCruz Park and went to different parks. There is no if, and, or buts – every park in this area is different. Now, if we look at Lydgate Park and we think to ourselves where are we going to go at Lydgate? We are going to go the furthest, closest to Kamalani Bridge area along the Golf Course, that is an area where the tradewinds will blow down and that is a fine area. But let us look at other places when we can consider, I am going to start at Kōloa Park. The closest, the furthest away you are going to go downwind will be adjacent, if you lit up a cigarette that that smoke will blow right into the Rosie Bukoski Memorial Pavilion and people are right next door there. Kalawai Park, you light up your cigarette furthest away with the trade winds, it will go into the cooking area of Kalawai Park. Lucy Wright Park, I can tell you one (1) thing... Po'ipū Beach Park, the area in the parking lot that floods, if one were to light up a cigarette right there with the tradewinds, that wind will blow it right into the rooms of the Marriott Waiohai Vacation Club, The Waiohai. When I went to Salt Pond Beach Park along with the other parks on the Westside, Salt Pond is a clear indication to me with what hazards can happen. That being is I do not realize if people know how large that park is, in other words when you pull into the park it is way larger than a hundred yards to get to the end. If I wanted to light up a cigarette with the trades, what do I do? Do I go in between two cars and light up a cigarette and disregard it wherever I want to? Now, maybe there is dripping oil, maybe there is gas, I do not know but if you go to the furthest side away and if you smoke and disregard, please keep in mind if you have a chance that is all brown dead brush. July 7, Saturday, I was up in a helicopter, I saw the fire that happened adjacent to Burns field. If you go from Menehune Fishpond onto the bypass road where I live, there are constant fires within that area – discarded cigarettes. We all know what happened to Weliweli. What I wanted to say is who knows what the direction of the wind is going to be at a given time, the wind can blow at any given time and speaking to those that I feel knows best about the law, if you go into a Judge and the Judge says I do not know how you determine how the wind blows. If we were to take the time to look at the fines, we want to fine people one hundred bucks, two hundred bucks, more than three hundred bucks but not more than five hundred bucks. If I were to light up a cigarette right here, I get charged fifty bucks; if I light another one up, I get charged another fifty, charged another fifty. I do not know how that can fly in the Courts. What really opened my eyes is that we have one (1) ranger on duty from Hā'ena to Līhu'e, one (1) ranger on duty from Līhu'e to Kekaha, needless to say on two (2) patrolmen in that area. I do not really think that there is a way for us to monitor and/or study and get good data as to how this is working or not. I want to make it perfectly clear here, I am not flip flopping, I am not changing anything around, I stood by a total ban from the beginning but now after hearing testimony from the Committee, I did my due diligence to move around this island to see that there might be a lot more problems and that problems I think a lot of fire hazards in this dry summer. I just want to say I support the Coalition, I support and I have always supported the American Cancer Society Relay for Life, I have done them all at Hanapēpē, on the North Shore, and at this point I felt for me a win-win situation now would be a resolution and progressively move forward with education. I hope that the Coalition can help the County not only on education but signage out there and I want that to happen immediately because we all know the health hazards at this point right now but I do not believe that what is amended from the original bill that I thoughtfully proposed, I believe it is totally different from where I started from the beginning. I am not going to be supporting the bill.

Mr. Rapozo: I think I made most of my comments at the Committee Meeting. I am not going to be supporting the bill. I think yesterday was a really good example. While we were out at the senior softball opening out in Hanapēpē, after in fact... it may have been with Councilmember Chang or Kualī'i, I

asked the question which way is the wind blowing here? Because you could not tell, the wind was just moving and it goes in all kinds of directions. So, how would an officer determine what is down wind, it is impossible here with the trades and the way it changes. The purpose of that comment is to basically say this bill is not enforceable. I do not think it is responsible for a Council to pass bills knowing that it cannot be enforced. Just because we can... yes, we do – we all vote and if it passes, it becomes law but if we do it knowing that it cannot be enforced, I think it is pretty troubling because it is passing a law with the knowledge that it will not be enforced, I just do not think it is right. The Resolution on the other hand is clearly a policy statement with no enforcement authority, so I think it is a much better route. That is one of the things.

The standards set by this bill are different from the standard set by the other bill about smoking in public places like bars and restaurants. I do not see the nexus. I cannot understand how smoking in an outdoor area would raise a higher penalty than one smoking on the inside which is a much more dangerous condition. I am not sure what the nexus was to establish the fines on this one that needed to be addressed. If anything it should have been mirrored to the existing smoking bill that is in place involving people that smoke in areas open to the public. You can smoke within twenty feet of any door on any public street but you cannot do it in a park, so I question that – I do not think it is standard. Then of course there is the argument of the Golf Course, how can we pass a no smoking in any park but we exempt the Golf Course? I do not see the logic with that. I think we have a lot of park users at the Golf Course, I think we have a lot of people – a lot of children at the Golf Course... I do not see the logic. If it is bad for you at Lydgate then it should be bad for you at Wailua Golf Course, if it is that bad. I would agree with Councilmember Kualii that there are no studies and we got that straight from the Tobacco Coalition – that there are no studies that we know of any way that tested the secondhand smoke in open areas in a distance whether it is thirty, forty or fifty feet, there are no studies. Obviously, we all know that if it is in close proximity obviously the secondhand smoke is dangerous but what is it? Where does that end and again the public beaches wide open with tradewinds and ocean winds, I think... there is a different scenario, it is apples and oranges when you compared it with someone in a vehicle or in a house or building. And then the issue of personal liberties, I believe that we are here to protect everybody's rights – smokers as well. I think there was a compromise available and the compromise was in my opinion was to provide a buffer zone which was a safer buffer zone within the park and obviously it did not pass. To put them in a parking lot far away, Kalawai Park is another good example, the parking lot is far away from the park and activity. Yesterday at the senior softball tournament, the parking lot is far away so you would not... and there was one of those gentleman from Anahola, I believe or from the North Shore playing on one of the Kaua'i teams, he walks around with a cigar in his mouth. He actually lit it up after the opening ceremony but he would have to go all the way in the parking lot to go light up his cigar and is that really practical? Does he deserve that? I do not know. I know in Mr. Ochoa's testimony, he said a Councilmember said a person should not be stopped from smoking in the park if no one was in the park, should we allow a person to drink and drive if no one else is on the road? That is a very good analogy, drinking and driving is illegal and smoking is legal, that is the difference. That is not a very accurate analogy and I was the Councilmember that made that comment. If you are a smoker and you get to a park and no one is there, why should you be prohibited from doing a legal activity? I am not going to be supporting the bill and I am looking at supporting the Resolution later on today but at this point, I am going to be voting no.

Ms. Nakamura: I did not come to this discussion with a position and so this has been a real learning process for me having this deliberation over the past month. I think I was under the mistaken impression that the furthest downwind provision was taken out at the Committee Meeting but I guess it was part of this amended bill that is before the Council. I have always found that to be problematic in enforcing, but in the course of this discussion, I think one of the things I learned is that government are getting involved in this area. There are over six hundred municipalities across the United States that have adopted smoke free park ordinances, including States. The real privilege of smoking has been chipped away over the years from airplanes, bars, public buildings, just slowly chipping away at the privilege of where people can and cannot smoke, and this just takes it to the next level. The most influential meeting that I had and just doing some research on this slide has been with Doctor (inaudible) Wall who really impressed upon me the fact that education alone will not change this problem, that really behavioral changes are needed as well, and good public policy takes into account. I was originally proposing this Resolution that Councilmember Kualii and Chang introduced and that was really my original language but mainly because I thought of the enforcement issue was going to be a problem. I spoke also to Police Chief and Deputy Police Chief and both actually supported the bill; they told me in spite of the enforcement challenges, they thought it was better than not having anything. This has also influenced my thinking about this bill. I am hoping there would be a... and I do not know if the Chair will allow it but a further amendment around this but... but I am going to throw my support for this bill as a way of gradually easing in this smoke free park policy but also keeping the door open for further amendments because we have the luxury of time to phase this in.

Chair Furfaro: I want to make it very clear, this bill has gone twice through Committee, twice to the full Council and we are now at a voting stage and it is not appropriate to now be throwing in new items in there. That is my answer to your question. We have given this item more agenda time than most items we deal with.

Mr. Bynum: I appreciate all of the dialog and I want to highlight what Councilmember Nakamura just talked about-privilege. Earlier in this debate I said smokers have the right to smoke and I was corrected by a number of people who said no, and this is an important distinction that we have privileges and rights. Driving for instance is a privilege and we restrict that privilege, you drink, you refuse that test, you are going to lose that license, that privilege for a period of time. We restrict privileges based on public safety and public analysis but I believe non-smokers have a right not to have secondhand smoke imposed on them and to have a restriction of a privilege to protect the rights of the people who choose not to ingest toxic materials, to me, this is easy. I am a history buff, I love reading transcripts of our County Council ten (10) years ago or reading comments that people made about civil rights legislation. We look back at it and say "oh my goodness, can you believe people actually argued that" and I think someday somebody is going to look back at the transcripts of these meetings and say "wow, can you believe those arguments even got made" because I think there will come a time when smoking in public spaces is prohibited period. That this is a bill whose time has come. I am concerned about liberties but we had to debate whether people should have the liberty to walk their dogs and there were people willing to restrict that liberty and the argument was based on public safety. This is a restriction of a privilege, it is not taking away a right. People can still smoke, they can get in their cars and drive wherever they like and smoke and you are right most smokers are courteous, but just walk down any street, you are going to see there is a whole

bunch who are not because the cigarettes are everywhere. I hope there are four (4) votes for this.

Ms. Yukimura: I am glad Councilmember Nakamura brought back the testimony from the Police Chief because I feel the amendments we have made to the bill have tried to build on the top law enforcement officers' input that it is much easier to enforce an area ban than it is a distance ban. I feel the version we have now is much better. I am willing to amend out the parking lot twenty feet. I want to point out that that twenty feet discretion based on a law enforcement officer is about taking in the circumstances of the moment, but I am preparing an amendment and I want to request and actually implore the Chair to allow us to make this one (1) refinement based on the discussion that has happened here so that we can take out that problematic section. I also want to say that the parking lot exception is very much like the original smoking ban where we said not in buildings but twenty feet away. We are saying not in buildings but in the parking lot, which is much easier to enforce. It is not a perfect solution, there may be users affected by that, but it is an effort to allow smokers to go and take a smoke and then come back and participate with their families and friends at the parks. We are going to see how that works and learn from that experience and then further revise public policy based on that. I think it is a realistic and reasonable compromise and yet it comes on the point of having to regulate hazards to health especially to the health of our children. I do have an amendment on that.

Chair Furfaro: I have not made a decision on that. We have been here for a long time, so what I am going to do is I am going to say my piece, we are going to recess and then I am going to discuss in my observations with others how long this thing keeps going on, new amendments, new changes and so forth. If you asked Drug Free Kaua'i today what is their strategy of ending smoking in the beaches, believe me that they have a strategy. If you ask them how is their approach on ending smoking in the parks, they have a strategy. We need a strategy and we know that thinking if this is what we really want to accomplish, it is accomplished by lokahi and hoomanawanui. Being able to listen to others and do it in harmony and increments that are acceptable in the long run, not as the smoking world says "cold turkey." Hoomanawanui, we need to have patience, we have a lot of patience with this bill, it has gone through the cycle and we had a compromise and they chose not to compromise and now we are going through the cycle another time. I think it is really important for us to understand that we have to represent the unity of purpose, not mandate. We have to convince to the public why this is... smoking is a bad habit, I quit smoking twenty-six years ago and nobody smokes in my house when my grandchildren are there, nobody even smokes around the garage or carport, that is the way I feel about it. But to get us to where we should be, we should be progressive on the thinking of this. We should perhaps start with a Resolution that indicates let us get some participation in correcting this habit and I am sorry if you people feel that I cannot define the purpose of harmony with our community by doing lokahi on this, by trying to travel in a single direction at an end goal and the end goal would be to end smoking in public parks but we have to do it in a way that we expand the issue to all of our citizens on the goals and what we want to accomplish. Have patience and the courage to do it incrementally as we would starting with a Resolution, that is how I feel about it. I am a twenty-six year recovery smoker and let me tell you that it is a nasty habit but people have those habits and parks are privileges that they do have. Smoking on the beach with fishermen is a privilege they have but they are certainly working with the State because the State controls the beaches, not this County Council. I want to say that there was an opportunity to have a designated smoke area, they wanted the whole piece and I am saying that is the right direction for us to go through a Resolution.

You get weaned from smoking, that is how I did it thanks to the group that adopted me back in those days with Tobacco Free people that checked in on you and so forth. It is a tough going but more importantly we need this strategy of how we are going to get there. I think taking these privileges of smoking in our park away from our citizens, we have to have direction, we have to have a single goal. That goal is out there, I know the goal is out there for Smoke Free Hawai'i, it is either 2015 or 2016 in their strategy, so they have strategic thinking in their programs. On that note, I am going to ask you folks to take this time to do another amendment if you so desire but I am going to ask... I would like everybody to realize that you talk specifically about the amendment and nothing else. I do not think at this time going right into an ordinance is appropriate. I think having a strategy through a Resolution is the best way to go. On that note, I am going to call up Allison. Allison, you are here for our earlier item and I would like to go back to.

Mr. Bynum: Mr. Chair?

Chair Furfaro: No, I am not recognizing anybody on further discussion. In our rules, you had two (2) times to speak, you spoke two (2) times. Let us go back to this other item here.

C 2012-341 Communication (08/02/2012) from the Environmental Services Management Engineer, Public Works, Solid Waste Division, requesting Council approval of the right-of-entry agreement and indemnification of Kekaha Agriculture Association as follows:

- Right-of-Entry Agreement (Kekaha Certified Redemption Center).

There being no objections, the rules were suspended.

Chair Furfaro: Allison, there were some members that wanted to reflect back on this easement provision from the year 2009.

Mr. Rapozo: I just wanted to get an overview or briefing on what this agreement does and if it is involved or anything to do with the current status of the HI5 suspension?

ALLISON FRALEY, Solid Waste Program Development Coordinator: This agreement is to lease a space to operate the Kekaha Certified Redemption Center. We have had prior lease for a three (3) year period at that location and so this is to basically renew that agreement. It is unrelated to the current closures at the redemption centers.

Mr. Rapozo: This center continues to operate right now?

Ms. Fraley: Right now, they temporarily have closed. I have actually spoke with the operator today and they said they plan to reopen all of their locations starting tomorrow, so we hope on Saturday they will be at the Kekaha location. We will be issuing a news release once we have confirmation that they have the funds to operate.

Mr. Rapozo: And that funds come from the State?

Ms. Fraley: Yes.

Mr. Kualii: The lease was in place for three years prior, so it was a three year lease that ended?

Ms. Fraley: Correct, it actually was a one (1) year lease with two (2) extension options which took place.

Mr. Kualii: I thought I saw the amount was six thousand dollars?

Ms. Fraley: Yes, it is five hundred dollars a month.

Mr. Kualii: The first year, the second and the third year was all the same amount?

Ms. Fraley: Correct.

Mr. Kualii: And now we are going into the fourth year, there was no reason to increase that amount?

Ms. Fraley: No.

Mr. Kualii: Market rates or... is it discounted rate because they are doing a service to the County and citizens?

Ms. Fraley: Correct and actually the rent... we get a grant from the State Department of Health to pay that rent, so the County pays it through grant funds from the State.

Mr. Kualii: We get the County and then we pay ourselves as the County?

Ms. Fraley: No, we pay Kekaha Ag who is the property owner.

Mr. Kualii: And who is Kekaha Ag? A non-profit?

Ms. Fraley: Yes.

Mr. Kualii: And they are not the same as the Kekaha Certified Redemption Center?

Ms. Fraley: No, they are not.

Mr. Kualii: That is another non-profit?

Ms. Fraley: Kauai Community Recycling Services is the operator at the redemption center, they are a for-profit business who has a contract with the County to operate that mobile redemption center at the Kekaha site.

Mr. Kualii: The last question is for how much area? Is it land and building?

Ms. Fraley: No, it is just an open space. I believe it is a quarter acre. It states it in the... and I am sorry I do not have my document.

Ms. Yukimura: Yes, it does on page one.

The motion to approve Bill No. 2437, Draft 2 as amended was then put, and failed by the following vote:

FOR ADOPTION:	Bynum, Nakamura, Yukimura	TOTAL – 3,
AGAINST ADOPTION:	Chang, Kualii, Rapozo, Furfaro	TOTAL – 4,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: Let us go back to the Resolution at this point.

Ms. Nakamura: My amendment is to remove the section relating to requesting the State Legislature to adopt a law prohibiting smoking at all public beaches.

Mr. Bynum: I just wanted to point out that if both these amendments pass then there is no point of having the Resolution because those are the two (2) things that we are asking. There is one (1) Resolution saying do not do this... do not do underage smoking and the other one saying do not do smoking on the beaches but what I want to ask is that this Resolution, the original version be read in its entirety into the record. May I make that request?

Chair Furfaro: Sure. I will have the Clerk read it and I disagree on your last two (2) statements and that is why I am going to have the Clerk read it.

There being no objections, the rules were suspended.

RICKY WATANABE, County Clerk: This is a Resolution relating to smoke-free County parks and requesting a State ban on underage smoking and smoking at all public beaches.

WHEREAS, tobacco usage has been determined to have many health risks, and cigarettes and other tobacco products (OTP) contain the addictive drug nicotine, which can be absorbed into the bloodstream when a tobacco product is chewed, inhaled, or smoked; and

WHEREAS, it has been determined that tobacco products containing a combination of nicotine and other chemicals (natural and added) cause a wide range of harmful effects on the human body ranging from symptoms as mild as temporary elevated blood pressure, nausea, diarrhea, and tremors to symptoms as severe as allergy-induced asthma attacks, cancer, heart disease, and death; and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard and in Hawai'i, thousands of young people are exposed to tobacco smoke pollution every day; and

WHEREAS, the U.S. Surgeon General has stated that there is no safe level of exposure to secondhand smoke, whether indoors or outdoors, and that children's exposure to secondhand smoke causes an increased risk of sudden infant death syndrome, respiratory infections, middle ear diseases, more severe asthma, respiratory symptoms, and slowed lung growth; and

WHEREAS, secondhand smoke is responsible for the premature deaths of over 430,000 Americans each year from lung cancer, heart disease, respiratory illness, and other diseases; and

WHEREAS, secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis, in as many as 300,000 children in the United States under the age of 18 months each year, and exacerbates childhood asthma; and

WHEREAS, children are acutely vulnerable to the dangers of tobacco use, and approximately 80% of smokers started smoking before 18 years of age, with the average initiation age being 12 years old; and

WHEREAS, every day an estimated 3,900 young people under the 18 years of age try their first cigarette, and one-third of these children will die prematurely from tobacco-related illnesses; and

WHEREAS, in Hawai'i, an estimated 2,000 youth each year under 18 years of age become addicted to tobacco; and

WHEREAS, in 2004, American Poison Control Centers received nearly 8,000 reports of children poisoned by the ingestion of cigarettes, cigarette butts, and other tobacco products; and

WHEREAS, in order to protect the health, safety, and general welfare of all park patrons; now, therefore,

BE IT RESOLVED by the Council of the County of Kaua'i, State of Hawai'i, that it hereby requests that all County of Kaua'i park patrons to show aloha and respect for non-smokers by refraining from smoking when other park patrons are in close proximity.

BE IT FURTHER RESOLVED that the Council requests that all County of Kaua'i park patrons do their part to preserve the beauty of our parks by properly disposing of all tobacco litter.

BE IT FURTHER RESOLVED that the Council requests the Administration purchase and erect signage at all County parks; such signage shall read "Please Refrain From Smoking When Other Park Patrons Are In Close Proximity".

BE IT FURTHER RESOLVED, that the Council requests the Hawai'i State Legislature to adopt a law to prohibit minors (those under 18 years of age) from smoking.

BE IT FURTHER RESOLVED, that the Council requests the Hawai'i State Legislature to adopt a law prohibiting smoking at all public beaches.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to Mayor Bernard P. Carvalho, Jr.; Lenny Rapozo, Director, Department of Parks and Recreation; Ron Kouchi, State Senator; Dee Morikawa, State Representative; James Tokioka, State Representative; and Derek Kawakami, State Representative.

Introduced by KipuKai Kualii and Dickie Chang.

The meeting was called back to order, and proceeded as follows:

Mr. Bynum: We are on the amendment and this Resolution makes very strong "whereas" statements for justification and it has relatively weak "be it further resolved"... please kokua kind of things, other than saying to the

FOR AMENDMENT: Chang, Kualii, Nakamura, Rapozo, Furfaro	TOTAL - 5,
AGAINST AMENDMENT: Bynum, Yukimura	TOTAL - 2,
EXCUSED & NOT VOTING: None	TOTAL - 0.

The motion to approve Resolution No. 2012-51 as amended was then put, and carried by the following vote:

FOR ADOPTION: Bynum, Chang, Kualii, Nakamura, Rapozo, Furfaro	TOTAL - 6,
AGAINST ADOPTION: Yukimura	TOTAL - 1,
EXCUSED & NOT VOTING: None	TOTAL - 0.

Mr. Watanabe: Six ayes and one no.

Mr. Bynum: Put my vote as a "no" please.

Chair Furfaro: Before we break here for lunch, I would like to say something to the group here. I want to say to you that I think you heard what I had to say, we are looking for the goal, the ultimate goal and the vehicles to get there. You have to continue to negotiating very skillfully on quite a few of the questions that came upon enforceability and so forth, and I hope it is part of your business plan. I think by way of this Resolution for the Council, we are indicating the fact of the matter is we know where we should be and maybe it is by 2015 or 2016 and we need to establish some way to wean the public from the use of the parks for the purpose of getting them eventually to a smoking free facility. We do have a Resolution and copies of this Resolution will be going to the State Legislators.

There being no objections, the Council recessed at 12:27 p.m.

The Council reconvened at 1:35 p.m., and proceeded as follows:

Chair Furfaro: Just to refresh everybody's memory, read the bill again, I think we already approved the amendments.

Bill No. 2435, Draft 1 - A BILL FOR AN ORDINANCE TO AMEND CHAPTER 22, KAUAI COUNTY CODE 1987, AS AMENDED, BY ESTABLISHING A NEW ARTICLE RELATING TO ALARM

Chair Furfaro: Where we left off, Vice Chair Yukimura had asked for some time to check on some points that she thought should be considered before we actually voted on the amendments.

Ms. Yukimura: After certain time to think about it and check, I do not have any more amendments to submit.

Mr. Bynum: I just want to thank Councilmember Rapozo for bringing this bill and shepherding it through. We came in this morning and all of us had some input from the public which is a great thing about democracy, we get to hear real world examples and be able to tool things. Mr. Rapozo made amendments that I totally supported because they were similar to the ones that I was considering. I just wanted to thank you. I think this is a good bill and I think it will improve public safety. My encouragement to the Police Department would be please use what resources you have to get the word out to those folks who currently

August 8, 2012

FLOOR AMENDMENT

Bill No. 2435, Draft 1, Relating to Alarm Systems

Introduced By: Mel Rapozo, Councilmember

Bill No. 2435, Draft 1, Section 1 is amended in its entirety to read as follows:

“SECTION 1. Chapter 22, of the Kaua‘i County Code 1987 is hereby amended by establishing a new Article to be appropriately designated, and to read as follows:

ARTICLE __. ALARM SYSTEMS

- Sec. 22-___.1 Purpose and Intent
- Sec. 22-___.2 Definitions.
- Sec. 22-___.3 Alarm User Permits Required.
- Sec. 22-___.4 Multiple Alarm Systems.
- Sec. 22-___.5 Response to Alarm -- Determination of False Alarm.
- Sec. 22-___.6 Review of False Alarm Determinations.
- Sec. 22-___.7 Service Charge Assessment for False Alarms.
- Sec. 22-___.8 Service Charges And Fees.
- Sec. 22-___.9 Failure to Obtain Permit for Alarm System – Service Charge.
- Sec. 22-___.10 Deposit of Fees, Charges, and Fines in Special Account.
- Sec. 22-___.11 Annual Report.
- Sec. 22-___.12 Government Immunity.

Section. 22-___.1 Purpose and Intent.

The vast majority of emergency alarms to which members of the police department respond are false alarms. Such alarms are often the result of improper maintenance, faulty equipment, or improper or careless use of an alarm system. In the interest of protecting health, life, and property, and preserving the order and security of the County and its inhabitants by using law enforcement resources effectively and efficiently, the number of false alarms from business and residential premises must be reduced. The purpose of this chapter is to reduce the danger and annoyance associated with false alarms and to encourage business and residential owners to use and maintain their alarm systems properly.

Section 22-___.2 Definitions.

As used in this article, unless the context requires otherwise:

“Activation” of an alarm system means the emission of an audible or silent alarm or signal generated by an alarm system, including the transmission of a message by means of an automatic telephone dialer.

“Alarm system” means any single device or assembly of equipment designed to signal the occurrence of an emergency, including illegal entry or other activity requiring immediate attention, to which the police department is expected to respond or does respond, and that emits an audible alarm or

transmits a signal or message, including a telephonic message, when activated. The term does not include alarms installed in motor vehicles or fire alarms.

“Alarm system coordinator” means a subordinate designated by the Chief of Police to administer this article.

“Alarm user” means any person owning or leasing an alarm system, or on whose premises an alarm system is maintained.

“Chief of Police” means the Chief of Police of the Kaua’i Police Department.

“Common cause” means a common technical difficulty or malfunction which causes an alarm system to generate a series of false alarms.

“Emergency” means (1) an unauthorized entry or attempted unauthorized entry into a building, place, or premises, excluding any motor vehicle; or (2) the commission of a crime.

“Emergency service” means any law enforcement, fire, or medical service.

“False alarm” means any alarm activation that is communicated to an emergency service but that is not in response to an actual or threatened criminal act or violation.

“Notice” means written notice, served personally or mailed, addressed to the person to be notified at the person’s last known address. Service of such notice shall be deemed affected upon completion of personal service or upon deposit of such notice in the United States mail.

“Permit Holder” means the holder of a permit issued under Section 2.

“Person” means an individual, corporation, partnership, trust, limited liability company, association, organization, or similar entity, but excludes any agency of the United States, the State of Hawai’i, or the County of Kaua’i.

“Police department” means the Kaua’i Police Department.

“Service charge” means a charge assessed to a Permit Holder to offset the County’s cost of responding to a False Alarm as set forth in this code.

Section 22-___3 Alarm User Permits Required.

(a) Permit Required: No person shall use an alarm system which is designed to elicit, either directly or indirectly, a police response, without first obtaining a permit for such alarm system from the Alarm System Coordinator.

(b) **Permit Issuance:** The permit shall be requested on an application prescribed by the Chief of Police, or designee. An Alarm User shall obtain the application from the Alarm System Coordinator, provide the information requested on the application, and file the application, together with the applicable fee, with the Alarm System Coordinator. Upon receipt of a completed application and the fee prescribed in subsection (e), the Alarm System Coordinator shall issue a Permit to the Alarm User. Permits shall be valid for one year from the date of issue and shall be renewable on an annual basis. It shall be the duty of the Permit Holder to renew the permit annually prior to expiration of the Permit. The Permit Holder shall complete a renewal form as prescribed by the Alarm System Coordinator and return it, together with the renewal fee, to the Alarm System Coordinator, who shall renew the Permit upon receipt of the application and renewal fee. If the Permit Holder fails to renew the Permit prior to its expiration, the Permit Holder must apply for a new Permit and pay the fee for a new Permit.

(c) **Transfer of Possession of Premises; Non-Transferability of Permit:** When possession of the premises with an alarm system is transferred, the person obtaining possession of the premises shall apply for a Permit within 30 days of obtaining possession of the premises. Alarm User permits are not transferable.

(d) **Reporting Updated Information:** Whenever the contact information provided by the applicant on the Permit application changes, the correct information shall be provided by the Permit Holder to the Alarm System Coordinator within 30 days of the change. Failure to provide correct information to the Alarm System Coordinator within 30 days of the change may result in revocation of the permit.

(e) **Fees:** The fee for a Permit shall be ~~[\$150.]~~ \$25. The fee for Permit renewal shall be ~~[\$50.]~~ \$10.

(f) **Confidentiality:** Completed applications and permits shall be for recordkeeping purposes only and shall be held confidential to the extent provided for by State and/or Federal law.

Section 22-___4 Multiple Alarm Systems.

If an Alarm User has one or more alarm systems protecting two or more separate structures having different addresses, a separate Permit shall be required for each such structure.

Section 22-___5 Response to Alarm – Determination of False Alarm.

(a) **Police Response:** Whenever an alarm system is activated which results in a response by the Police Department, the responding police officer shall inspect the area and determine whether an actual or threatened criminal act or violation existed at the time of the system's activation, and if not, determine whether the alarm was a false alarm.

(b) **Notification:** If the police officer at the scene of the activated alarm system determines the alarm to be false, the police officer shall make a

report of the False Alarm. The Permit Holder or, if there is no Permit, the owner of the premises as appearing in the tax rolls of the County, shall be notified in writing, by the Alarm System Coordinator, of each False Alarm determination. Notice shall be made personally, by mail, or by posting in a prominent location at the premises where the False Alarm occurred.

Section. 22-____.6 Review of False Alarm Determinations.

(a) The Alarm System Coordinator shall, upon request from a Permit Holder, review the determination by a responding Police Officer that an alarm was false. The review shall be conducted by the Alarm System Coordinator only if the Permit Holder requests the review in writing within 10 days of the date on which the false alarm determination was mailed to or received by the Permit Holder. The written request for review of a false alarm determination shall include the following information:

- (1) The Permit Holder's name and mailing address;
- (2) Address of the premises at which the alarm system is installed;
- (3) The date of the alarm being contested;
- (4) The permit number for the alarm system; and
- (5) The basis for the request for review.

(b) The Alarm System Coordinator shall make a determination on the Permit Holder's request for review and shall, within seven days thereafter, mail written notice of the Coordinator's determination to the Permit Holder at the address supplied in the request for review.

Section 22-____.7 Service Charge Assessment for False Alarms.

(a) A charge assessed pursuant to this section shall be considered an obligation owed by the Permit Holder to the County of Kaua'i and shall be payable within 30 days from the date of receipt of the assessment notice.

(b) (1) A Permit Holder who installs a new Alarm System or reinstalls an alarm system shall not be subject to a False Alarm determination for a period of 30 days from the date of issuance of the Permit. An alarm user who obtains a Permit for an alarm system already in operation on the effective date of ordinance shall not be subject to a False alarm determination for the 30-day period immediately following issuance of the Permit.

(c) A series of false alarms generated by an alarm system, for which a permit has been issued under this article, as a result of a Common Cause within any 48-hour period shall be considered a single occurrence of a False Alarm, provided that:

(1) Repairs to the Alarm System to eliminate the Common Cause are made before the Alarm System generates additional false alarms after the 48-hour period;

(2) The Alarm User provides documentation of the repairs to the Alarm System Coordinator; and

(3) No additional false alarms are generated as a result of the Common Cause within the 30-day period immediately following the completion of repairs.

(d) A service charge shall not be assessed for the first or second false alarms activated from any premises within a 12-month period immediately following issuance of a new permit. The third false alarm and all false alarms thereafter activated from any premises shall cause the Permit Holder to be assessed a service charge of \$150 per occurrence.

Section 22-___8 Service Charges and Fees.

New Permit Fee	[\$150] \$25
Renewal Fee	[\$50] \$10
Service Charge – 1 st and 2 nd False Alarm	\$0
Service Charge – 3 rd False Alarm (and subsequent)	\$150
Operation of a Non-Registered Alarm System	[\$250] \$100

Section 22-___9 Failure to Obtain Permit for Alarm System – Service Charge.

Persons operating an alarm system without obtaining a permit shall be assessed a service charge of [\$250] \$100 for each false alarm incident.

Section 22-___10 Deposit of Fees, Charges, and Fines in Special Account.

All moneys collected from fees, charges and fines required by this article shall be deposited in a special account in the general fund and shall be used for the administration and enforcement of this Article.

Section 22-___11 Annual Report.

No later than 30 days following the first and second anniversary of the effective date of this ordinance, the Chief of Police shall submit to the Council and the County Clerk a report of the Police Department's activities under this Article, which shall include at least the following:

- (a) A breakdown of general fund and special account resources assigned to or expended on the administration of this article;
- (b) An accounting of the number of permits issued;
- (c) An accounting of the number of false alarms by category (first, second, third, etc.; residential or commercial, etc.);

- (d) An accounting of the number of false alarm determinations appealed and reviewed, and the disposition of those reviews;
- (e) An accounting of the permit fees received;
- (f) An accounting of the service charges assessed and paid; and
- (g) An accounting of the number of violations/citations for failure to obtain a required permit.

Section 22-___ .12 Government Immunity.

The following language shall be included on all Permit application and renewal forms:

Alarm Registration is not intended to, nor will it, create a contract, duty or obligation, either expressed or implied, of response. Any and all liability and consequential damage resulting from the failure to respond to a notification is hereby disclaimed and governmental immunity as provided by law is retained. By applying for an Alarm Permit, the Permit Holder acknowledges that law enforcement response may be influenced by factors such as: the availability of police units, priority of calls, weather conditions, traffic conditions, emergency conditions, staffing levels, and prior response history.”

(Material to be deleted is bracketed. New material is underscored. All material is new.)

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August 8, 2012

FLOOR AMENDMENT

Resolution No. 2012-51, RESOLUTION RELATING TO SMOKE-FREE COUNTY PARKS AND REQUESTING A STATE BAN ON UNDERAGE SMOKING AND SMOKING AT ALL PUBLIC BEACHES

Introduced By: Nadine K. Nakamura, Councilmember

Resolution No. 2012-51 is amended in its entirety to read as follows:

“RESOLUTION RELATING TO SMOKE-FREE COUNTY PARKS AND REQUESTING A STATE BAN ON UNDERAGE SMOKING [AND SMOKING AT ALL PUBLIC BEACHES]

WHEREAS, tobacco usage has been determined to have many health risks, and cigarettes and other tobacco products (OTP) contain the addictive drug nicotine, which can be absorbed into the bloodstream when a tobacco product is chewed, inhaled, or smoked; and

WHEREAS, it has been determined that tobacco products containing a combination of nicotine and other chemicals (natural and added) cause a wide range of harmful effects on the human body ranging from symptoms as mild as temporary elevated blood pressure, nausea, diarrhea, and tremors to symptoms as severe as allergy-induced asthma attacks, cancer, heart disease, and death; and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard and in Hawai'i, thousands of young people are exposed to tobacco smoke pollution every day; and

WHEREAS, the U.S. Surgeon General has stated that there is no safe level of exposure to secondhand smoke, whether indoors or outdoors, and that children's exposure to secondhand smoke causes increased risk of sudden infant death syndrome, respiratory infections, middle ear diseases, more severe asthma, respiratory symptoms, and slowed lung growth; and

WHEREAS, secondhand smoke is responsible for the premature deaths of over 430,000 Americans each year from lung cancer, heart disease, respiratory illness, and other diseases; and

WHEREAS, secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis, in as many as 300,000 children in the United States under the age of 18 months each year, and exacerbates childhood asthma; and

WHEREAS, children are acutely vulnerable to the dangers of tobacco use, and approximately 80% of smokers started smoking before the age of 18 years of age, with the average initiation age being 12 years old; and

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WHEREAS, every day an estimated 3,900 young people under the age of 18 years of age try their first cigarette, and one-third of these children will die prematurely from tobacco-related illnesses; and

WHEREAS, in Hawai'i, an estimated 2,000 youth each year under the age of 18 years of age become addicted to tobacco; and

WHEREAS, in 2004, American Poison Control Centers received nearly 8,000 reports of children poisoned by the ingestion of cigarettes, cigarette butts, and other tobacco products; and

WHEREAS, in order to protect the health, safety, and general welfare of all park patrons; now, therefore

BE IT RESOLVED, by the Council of the County of Kaua'i that it hereby requests all County park patrons to show aloha and respect for non-smokers by refraining from smoking when other park patrons are in close proximity.

BE IT FURTHER RESOLVED that the Council requests that all County of Kaua'i park patrons do their part to preserve the beauty of our parks by properly disposing of all tobacco litter.

BE IT FURTHER RESOLVED that the Council requests the Administration to purchase and erect signage at all County parks; such signage shall read "Please Refrain From Smoking When Other Park Patrons Are In Close Proximity".

BE IT FURTHER RESOLVED, that the Council requests the Hawai'i State Legislature to adopt a law to prohibit minors (those under 18 years of age) from smoking.

[BE IT FURTHER RESOLVED, that the Council requests the Hawai'i State Legislature to adopt a law prohibiting smoking at all public beaches.]

BE IT FURTHER RESOLVED that copies of this resolution be sent to Mayor Bernard P. Carvalho, Jr; Lenny Rapozo, Director, Department of Parks and Recreation; Ron Kouchi, State Senator; Dee Morikawa, State Representative; James Tokioka, State Representative; Derek Kawakami, State Representative."

(Material to be deleted is bracketed. Material to be added is underlined.)

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August 8, 2012

FLOOR AMENDMENT

Bill No. 2437, Draft 2, Relating to Parks and Recreation

Introduced By: JoAnn A. Yukimura, Councilmember

1. Amend Bill No. 2437, Draft 2, by amending Section 3 to read as follows:

"SECTION 2. Chapter 19, Article 1, Section 19-1.3 of the Kaua'i County Code 1987, as amended, is amended to read as follows:

"Sec. 19-1.3 Definitions.

The following definitions shall apply to the provisions contained in this Article:

"County" shall mean the County of Kaua'i, State of Hawai'i.

"County Engineer" shall mean the County Engineer, Department of Public Works, County of Kaua'i, or his duly authorized representative.

"Department" shall mean the Department of Parks and Recreation, County of Kaua'i.

"Deposits" shall mean sums of money placed with the Department or Office as security for the use and maintenance of Parks and Recreation facilities.

"Director" shall mean the Director of Parks and Recreation, Office of the Mayor, County of Kaua'i, or his duly authorized representative.

"Office" shall mean the Department of Parks and Recreation, County of Kaua'i.

"Parks" shall mean any park, park roadway, playground, beach right-of-way, or other recreational areas under the control, management, and operation of the County.

"Permits" shall mean a written authorization signed by the Director of the Department of Parks and Recreation or his representative allowing use of parks and recreational facilities.

"Recreation facilities" shall mean any building or other physical structure, such as swimming pools, gymnasiums, community centers, pavilions, picnic tables, used for recreational purposes and under the control, management, and operation of the County.

"Shared Use Path System" shall mean the path surface, an area up to six (6) feet on each side of the surface, immediately adjacent comfort stations, immediately adjacent rest areas, and direct access from parking areas.

["Tobacco Product" means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be

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introduced into the human body, but does not include any nicotine replacement therapy product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.]

"Type I Activity" shall mean an activity organized and conducted by the County.

"Type II Activity" shall mean an activity open to the public and co-sponsored by the County and/or the State.

"Type III Activity" shall mean an activity organized and sponsored by any non-profit entity which does not charge for admission, solicit donations, or involve the sale of goods, wares, merchandise or services to the general public.

"Type IV Activity" shall mean an activity organized and sponsored by any person or entity which does not charge admission, solicit donations, or involve the sale of goods, wares, merchandise or services to the general public.

"Type V Activity" shall mean an activity organized and sponsored by any non-profit entity which charges admission, solicits donations, or involves the sale of goods, wares, merchandise or services to the general public.

"Type VI Activity" shall mean an activity organized and sponsored by any person who charges for admission, solicits donations, or sells goods, wares, merchandise, or services to the general public for profit."

2. Amend Bill No. 2437, Draft 2 by amending Section 3 to read as follows:

"SECTION 3. Chapter 19, Section 19-1.4, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 19-1.4 General Prohibitions Applicable To All Parks And Recreation Facilities.

(a) No person at a park or recreation facility shall:

(1) Abandon any vehicle or other personal property.

(2) Leave any vehicle or other personal property unattended for longer than twenty-four (24) hours.

(3) Operate or use any audio devices including radios, television sets, musical instruments or noise-producing devices such as electric generators, or other equipment driven by motors or engines, in such a manner and at such times that produces unreasonable noise as defined in HRS Chapter 711-1101, unless authorized by the Director or his designated representative on a permit.

(4) Use utilities and appurtenances for non-recreational, commercial, or other activities, unless authorized by the Director or his designated representative on a permit.

(5) Install aerial or other special radio, telephone, or television equipment, unless authorized by the Director or his designated representative on a permit.

(6) Operate or use public address systems, whether fixed, portable or mounted on a vehicle, unless authorized by the Director or his designated representative on a permit.

(7) Disturb or interfere with any other person occupying an area, or participating in any authorized activity.

(8) Lead or let loose any dogs or other domestic animals, unless authorized by the Director or his designated representative on a permit, except for as set forth in Sec. 19-1.4(a)(21).

(9) Use, carry or possess firearms and weapons of any description, except for bows and arrows for archery competitions and air rifles for air rifle competitions when authorized by the Director or his designated representative on a permit.

(10) Drive or park motorized vehicles, including dune buggies, motorcycles, minicycles, and scooters, or ride horses, except on designated roads and parking areas, unless authorized by the Director or his designated representative by signage or on a permit.

(11) Mark, deface, or remove any natural feature or natural resources.

(12) Destroy, injure, deface or remove in any manner any public building, sign, equipment, monument, marker or other structure.

(13) Destroy, dig or remove tree, shrub or other plant, unless authorized by the Director or his designated representative on a permit.

(14) Construct or erect any building or structure of whatever kind, whether permanent or temporary in character, unless authorized by the Director or his designated representative on a permit, except for a pre-fab and manufactured quick tent no larger than 20 feet x 20 feet for an event or gathering.

(15) Start a fire except within designated grills, portable grills, and fireplaces. No fire shall be left unattended and all fires shall be fully extinguished after use.

(16) Throw or drop a lighted cigarette, cigar, pipe heel, match or other burning material, except to start a fire within designated grills, portable grills, and fireplaces as allows in paragraph 15.

(17) Use roller skates, roller blades, skateboards, or bicycles except in designated areas authorized by the Director or his designated representative through signage.

(18) Dance on any gymnasium floor while wearing shoes, provided that dancing with shoes shall be permitted if a protective covering over the floor is used.

(19) Dispose litter in other than designated trash receptacles.

(20) Operate or use air-horns, unless authorized by the Director or his designated representative on a permit, or to start or end events or races. As used herein, air-horn means a device intended to produce a sound signal by means of compressed air or gas or exhaust gas.

(21) Dogs shall be permitted on the shared use path system provided, however, that dogs or other domestic animals shall not be allowed on the path system beginning at the makai end of Nalu Road (entrance to Lydgate Beach Park) to the end of the path system fronting Hikinaakala Heiau (see Exhibit A attached). The County Engineer shall post signs to designate the appropriate area where dogs are not allowed on the shared use path system.

Any dog handler with a dog utilizing the shared use path system shall comply with the following:

(i) Be in command and control of dog at all times.

(ii) Have no more than two (2) dogs under his control.

(iii) Immediately remove his dog if it exhibits aggressive behavior.

(iv) Visibly carry the necessary instruments required for the removal and disposal of dog feces.

(v) Pick up and dispose of any and all feces left by the dog.

(vi) Have the dog wear at all times a valid current dog license tag that is clearly and visibly attached to the dog's collar.

(vii) Have the dog on a leash that is no more than six (6) feet in length at all times. Retractable leashes shall not be allowed.

(22) **Notwithstanding any other county ordinance to the contrary, [Smoke] smoke** or carry a lighted cigar, cigarette, pipe, or use any spark, flame or fire-producing device to light any of the aforementioned smoking devices.

(i) This prohibition shall not apply to any officially designated parking area, except:

(A) When a park parking lot is the primary venue for a public event, such as a sunshine market; or

(B) When, at the discretion of a law enforcement officer or park ranger, anyone using a smoking device is asked to move at least 20 feet farthest downwind from the nearest park user who is using the park area adjacent to the parking lot.

(C) Section 19(a)(22)(i) shall be repealed on January 1, 2016.

(ii) The Chief of Police shall provide a report to the Council before January 1, 2015, providing an evaluation of smoking in the parking lots of all County parks. The report shall include, but not be limited to, any concerns, citations collected, and fines collected. At such time, the Council shall reassess the effectiveness of the exception in Section 19(a)(22)(i) which allows for smoking in park parking lots.

(b) Entering or remaining in a park area when manifestly under the influence of alcohol, narcotics or other drugs, to a degree that may endanger oneself or other persons or property, or unreasonably annoy persons in the vicinity is prohibited.

(c) County Employees authorized by the Director shall have the authority to issue citations and charges for any violations of the provisions of this Section.

(d) It shall be unlawful to not comply with any provision of this section. ~~[Any] Notwithstanding any other county ordinance to the contrary,~~ any person violating any provision of this section shall be punished by a fine of not less than One Hundred Dollars (\$100.00) for the first offense. For the second violation of like offense, the punishment shall be a fine of not less than Two Hundred Dollars (\$200.00). For all violations in excess of two (2) of like offense, the punishment shall be a fine of not less than Three Hundred Dollars (\$300.00) and not more than Five Hundred Dollars (\$500.00). In addition, the County shall have the right to avail itself of any civil remedy appropriate under the circumstances.

(e) As it is anticipated that Phase III A (Wailua to Papaloa, including Kawaihau Spur) will be completed by the Fall 2011, which will provide approximately one (1) additional mile of paved pathway, the Director of Parks and Recreation shall submit a report to the Council within eighteen (18) months of the approval of this ordinance, providing an evaluation of allowing dogs on the path. The report shall include, but not be limited to, any concerns, incidences of dog bites, citations, etc. At such time, the Council shall reassess the effectiveness of this ordinance which allows dogs on the path.”

(Material to be deleted is bracketed. New material is underscored)

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